Supreme Court, U.S.
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No. 98-____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1998

MICHAEL BOWERSOX,
Superintendent, Potosi Correctional Center
Petitioner,

v.

HEATH ALLEN WILKINS,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

APPENDIX TO PETITION
Volume II

JEREMIAH W. (JAY) NIXON
Attorney General

STEPHEN D. HAWKE
Assistant Attorney General
Counsel of Record

CASSANDRA K. DOLGIN
Assistant Attorney General
of Counsel
Post Office Box 899
Jefferson City, Missouri 65102
(573) 751-3321

Attorneys for Petitioner

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Supreme Court of Missouri
en banc

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	No. 68393
	)	
HEATH A. WILKINS,	)	
	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT
OF CLAY COUNTY

Honorable Glennon E. McFarland, Judge

Defendant Heath A. Wilkins pleaded guilty to first degree murder and was sentenced to death for the brutal and multiple stabbing killing of a 26-year-old mother of two small children during the course of a robbery of the victim's convenience store. Affirmed.

Defendant, proceeding **pro se** after dismissing and waiving appointed counsel, entered pleas of guilty to the murder charge, armed criminal action (sentenced to life imprisonment), and unlawful use of a weapon (sentenced to five years imprisonment), the last charge arising at the time of defendant's arrest approximately two weeks after the murder. Even though defendant dismissed and waived his right to an attorney, the trial judge directed the attorney to stand by throughout all of the proceedings and be available to counsel and advise the defendant upon the latter's request.

The transcript of some 300 pages clearly reveals that the experienced and capable trial judge, the Honorable Glennon E. McFarland, fully explained, time and time again, defendant's various legal rights. Judge McFarland made repeated efforts to dissuade defendant from dismissing counsel and proceeding without an attorney. And, the conscientious trial judge offered to permit defendant to reconsider and withdraw his guilty pleas. Throughout the several court hearings, the defendant told the trial judge that he had fully and knowingly considered the alterative punishment of life imprisonment without eligibility for parole and that of the two possible sentences he preferred the death sentence. **Section 565.020**, RSMo 1986.

Because of defendant's stated position and acting as his own attorney, defendant did not take any of the prescribed steps to appeal his guilty plea and death penalty. Nevertheless, this Court requested the State Public Defender to enter the case as **amicus curiae** and to brief and argue "any issue subject to review."

The case was argued before the Court after defendant, appearing in person, advised the Court that he did not want the assistance of an attorney in the proceedings in this Court. At the conclusion of the arguments, the defendant was permitted to make a statement to the Court in which he took issue with some remarks of the public defenders arguing the case. The Court ordered defendant examined by the Department of Mental Health of Missouri to determine defendant's competence to waive counsel on appeal and ordered the case held under submission pending the report.

The report and evaluation of the defendant by the Department of Mental Health was filed with the Court, and the Court set aside the submission and appointed counsel to represent defendant. New briefs were filed and argument heard anew.

The complete record, consisting of the legal file and transcript, are before the Court. In order that this Court can properly review the death penalty imposed in this case and also consider the points advanced by the appointed counsel, it is necessary to set forth in some detail the evidence which led to the imposition of the ultimate penalty.

Approximately two weeks before July 27, 1985, the date of Nancy Allen's murder, defendant's friend, Patrick Stevens, was telling the defendant that he needed some money. "I [Wilkins] said, 'I know where we can get some money.' . . . I told him exactly how we were going to do it and where we were going to do it." Defendant then described to Stevens a plan to rob Linda's Liquors, which was later communicated to two other confederates, Ray Thompson and Marjorie Filipiak. Linda's Liquors and Deli was owned and operated by Nancy and David Allen. It is a small convenience store located in the town of Avondale.

The four freely discussed the plan to rob Linda's or an alternative location during the next two weeks. Defendant also stated to the others that he would kill whoever was behind the counter because he wanted no witnesses. During the period before the crime, defendant sharpened his "butterfly" knife (a narrow-bladed martial arts weapon) with a diamond file. Defendant's girl friend, one of the four privy to the plan, attempted to dissuade him from his murderous plot.

She had obtained some money from her parents and offered to run off with defendant but he declined.

On the evening of July 27, 1985, the four individuals were together. Defendant and his cohorts decided that the robbery of Linda's Liquors and Deli was on for that night. They all went to North Kansas City Hospital where they arrived about 10:15 p.m.

Leaving the other two, who were to secure taxis for after the robbery, defendant and Stevens left the hospital. To avoid detection they went through the woods to the deli. They carried a bag for carrying stolen merchandise. They arrived at a creek near the deli about 10:30 p.m. They observed the deli for a time because there were customers present. When the last customer had gone, they approached the deli. They took a towel out of the bag and wiped their shoes so that they would not leave mudprints. So that the counter person, Nancy Allen, would not be suspicious, they left the bag outside.

According to their prearranged plan, defendant ordered a sandwich while Stevens went to the rest room behind the counter. Noticing that Nancy Allen was not where Stevens could easily reach her, defendant asked her for additional lettuce. When she moved to comply with the defendant's request, Stevens rushed out of the rest room and grabbed her. Defendant went around the counter and thrust his knife into her back. Defendant said he was aiming at the kidneys, which he thought would be a fatal wound.

Nancy Allen fell face down onto the floor. However, she rolled into a spread-eagled position with her back on the floor. Stevens could not find everything

that he wanted to take and could not operate the cash register. He asked defendant what to do. Nancy Allen replied, directing Stevens to what he sought but this caused defendant to stab his helpless victim three more times in her chest. Two of these pierced the heart. She continued to speak, begging for her life. Defendant silenced her with four stabs into the neck, one of which opened the carotid artery.

As Nancy Allen's pierced heart oozed its life's blood into the opened cavaties of her lungs and onto the floor, defendant and Stevens gathered up cash and merchandise and left the store. Defendant wiped fingerprints off the door handle before leaving. They stuffed the stolen items in the bag outside and left. Nancy Allen lay dying on the floor.

The pair met their compatriots at the hospital. They paired up and left in separate taxis for the Greyhound Bus Depot. They paired up again in a different combination and went to their common summer hangout, Sherwood Lake. The cash register coin tray was thrown into the lake and they burned the stolen checks. A week later defendant wanted Stevens to lure "some guys" into the lake area so he, the defendant, could kill them. This action was aborted when a police officer came into the area and defendant threw the murder knife into the lake.

Street talk led the Metropolitan Major Case Squad to the defendant and his companions, and they were picked up by police on August 10th. Before taking a statement, Detective Ron Nichola advised defendant of his rights. Defendant's mother, Lt. Dave Rogers, and a juvenile officer were also present. An extremely incriminating statement was taken. The certification for

16-year-old Health Wilkins' trial as an adult was obtained on August 15, 1985 as required by **Section 211.071**, RSMo Supp. 1984.

The litany of Fifth Amendment rights was read again to defendant at his arraignment in circuit court on October 17, 1985. Appointed counsel Fred Duchardt of the Clay County Public Defender's Office represented Wilkins and entered a plea of "not guilty by reason of mental disease or defect excluding responsibility" or "not guilty" to all the charges against defendant. A mental examination was ordered and the results from the Western Missouri Mental Health Center were filed with the court on December 19, 1985. Defense counsel sought an additional examination, which was obtained privately at the Menninger Clinic in Topeka, Kansas. The results of that examination became available in April of 1986.

A competency hearing was set for April 16th to inquire into the competency of the defendant at the time of his act as well as his present competency to stand trial. Unknown to the court but after long discussions with attorney Duchardt, defendant reversed his position. Defendant wanted to release counsel and proceed **pro se**, plead guilty, waive jury trial, and actively seek a sentence of death as his penalty.[1] The trial court first

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[1]This is not as novel as it might sound. See Urofsky, A Right to Die: Termination of Appeal for Condemned Prisoners, 75 J. of Crim. L. & Criminology 553, 553 91984) (examining cases where convicted murders voluntarily terminated appeals that would have delayed their executions). "For some on death row, however, the darkest fear is not execution, but the prospect of living out their natural years

became fully aware of this turn of events at the April 16th competency hearing. Dr. Steven A. Mandracchia examined the defendant on November 27, 1985 before knowing that defendant intended to seek the death penalty. However, Dr. Mandracchia's opinions about defendant's competency were unequivocal. He said "that there was no evidence of mental disease or defect as defined by chapter 552 of the revised statutes of the state of Missouri." Later, after being advised of the defendant's intention to seek the death penalty, his opinion did not change. "I don't feel that he has any psychological or intellectual or cognitive limitations on his capabilities."

Dr. William S. Logan, M.D., Director of Law and Psychiatry at the Menninger Foundation, examined the defendant in March 1986 after the defendant had made his fateful decision. Attorney Duchardt had fully advised Dr. Logan of Wilkins' intentions as did the examinee himself. Dr. Logan resisted giving the categoric competency opinion that Dr. Mandracchia had given. Nonetheless, he found that the defendant had average intelligence. Moreover, although he found that Wilkins suffered from some emotional disorders of long standing, Dr. Logan "didn't see [Wilkins] as meeting the criteria for a severe mental illness as defined under the statutes of Missouri." In fact, Dr. Logan characterized "the execution of the crime as very purposeful, very deliberate, very well planned . . . . [with the defendant making] numerous efforts to avoid detection, showing that he appreciated the wrongfulness of it . . . . " After

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incarcerated in a six-by-nine cell, under constant surveillance, with little or no hope of ever regaining their freedom." Id.

hearing this testimony and interrogating defendant, the court found defendant to be competent.

Despite the finding of defendant's competency, Judge McFarland did not immediately grant his motion to proceed **pro se**. The right to proceed without counsel upon a voluntary and intelligent election has been recognized by the Supreme Court of the United States. **Faretta v. California**, 422 U.S. 806, 807 (1975). However, the **Faretta** court recognized the disadvantages to a defendant who proceeds **pro se**. **Id**. at 834-35. Here, the trial court found iteself faced with a peculiar constitutional quandary - a defendant may not be convicted and imprisoned without being accorded the right to assistance of counsel but a defendant may help himself into a conviction by his voluntary albeit inadequate self-representation. ***Id.*** at 832-33.

Consequently, the circuit judge took steps to ensure that the gravity and importance of defendant's decision was brought home to him. Judge McFarland explained the advantages of counsel to defendant, highlighted defendant's own inadequacies of education, age, and experience, and set the **pro se** hearing off for another week to ensure that defendant gave additional thought to this matter.

When the hearing resumed on April 23, 1986, the judge strongly voiced his belief that defendant should be represented by an attorney. He explained each consequence of defendant's action: the waiver of trial by jury on each charge including both phases of the murder trial, the ranges of punishment, the necessity of written waivers, as well as a detailed and vivid description of the effects of execution by poison gas.

Finally, he set a pleading hearing for May 9th and admonished the defendant to talk to those whom he trusted and who could advise him about his chosen course.

On May 9th, the circuit court reconvened to consider defendant's desire to change his pleas to guilty and to waive trial. Again, the court persisted in its efforts to convince the defendant that the course was unwise. Again, the court advised him of the enormity and finality of his waivers of legal rights. Defendant politely but firmly rejected the court's advice. Judge McFarland explained that this course would probably lead the cout to impose a death penalty. But, he explained that defendant might still get the life sentence. Finally, the court took evidence to substantiate a factual basis for the change of plea. At length, the court concluded that defendant understood the consequences of his actions and that defendant voluntarily and knowingly was waiving his rights and entering guilty pleas, and the court accepted the pleas of guilty to all the charges including murder in the first degree.

At the sentencing hearing of June 27, 1986, the court entered the maximum sentences on the two lesser charges. Judge McFarland again reviewed the variety of rights available to the defendant for the asking. Defendant declined again. The court offered him a chance even at this late stage to withdraw his plea.

> **The Court:** You understand that I think it would be in your best interests that you withdraw your plea?
>
> **Defendant:** "I understand what you think, your Honor."

Evidence was taken in the sentencing stage. It amply supports the guilt of the defendant. Heath A. Wilkins stood up at his last opportunity to address the circuit court and told the court, ". . . I'm asking the court to consider the death penalty as a [sic] more humane in the extent of possible happenings and pain received by, you know, me . . . . One I fear, the other one I don't."

Judge McFarland entered his order.

> The court does feel that the defendant's decision [to ask for death] was made rationally and after due thought and deliveration . . . . The court finds beyond reasonable doubt that the following aggravating circumstances exist: number one, the murder in the first degree was committed while the defendant was engaged in the perpetration of the felony of robbery; and, number two, the murder in the first degree involved deparavity of mind and that as a result thereof it was outrageously or wantonly vile, horrible or inhuman.

Section 565.032.2 subs. (11) and (7), RSMo. Supp. 1984 (respectively).

Counsel for defendant raise four major points and multiple sub-points in their brief. First, that the trial court erred in finding defendant competent to proceed because the evidence was inadequate and that the trial court failed to make specific findings on the defendant's competency to waive his constitutional rights.

Second, counsel argued that the circuit court failed to consider mitigation at the sentencing hearing as required by the decision of the Supreme Court of the United States and the Missouri sentencing statute. Counsel also contend in their second point that the trial court erred quantitatively in weighing the aggravating circumstances it had found against the mitigating circumstances it had found. The court did not find two other aggravating circumstances beyond a reasonable doubt that had been requested for consideration by the State: "The offender committed the offense of murder in the first degree for himself or another, for the purpose of receiving money or any other thing of monetary value from the victim of the murder or another." Section 565.032.2(4). "The murdered individual was a witness or potential witness in any past or pending investigation or past or pending prosecution, and was killed as a result of his status as a witness or potential witness." Section 565.032.2(12).

Third, the death sentence should be set aside because it is comparatively disproportionate to the penalty imposed in similar cases.

Finally, counsel contends that the death penalty is cruel and unusual per the Eighth Amendment of the United States Constitution and Article I, Section 21 of the Missouri Constitution.

This Court has repeatedly rejected constitutional challenges to Missouri's death penalty provisions. **State v. Driscoll**, 711 S.W.2d 512, 517 (Mo. banc 1986) (list of citations). Similarly, the Supreme Court of the United States has held that the death penalty is not **per se** cruel and unusual punishment prohibited by the Eight Amendment. **Gregg v. Georgia**, 428 U.S. 153,

188-95 (1976) (plurality opinion). Recent decisions have not varied from that course. **See** Project: Criminal Procedure, 75 Geo. L.J. 1170 (1987). The point should be denied.

Counsel contends that the lower court's finding of defendant's competency was not supported by sufficient evidence; further that the trial judge failed to make a specific finding of defendant's ability to waive constitutional rights. In testing sufficiency, the reviewing court does not weigh the evidence but accepts as true all evidence and reasonable inferences that tend to support the finding. **State v. Brown**, 660 S.W.2d 694, 698-99 (Mo. banc 1983). This Court has observed the defendant, his demeanor, and listened to him, and the trial judge had over a period of months observed the defendant for prolonged sessions of hearings.

The psychological record is not insufficient as characterized by counsel but extensive and consists not only of the expert testimony but also the galaxy of tests, and records on which they relied, from the numerous institutions with which defendant had dealt. The basic test is whether mental illness renders the criminal defendant incompetent to stand trial because he "lacks capacity to understand and proceedings against him or to assist in his own defense." **Section 552.030.3(1)**, RSMo Supp. 1984; ***see*** Winick, Restructuring Competency to Stand Trial, 32 U.C.L.A. L. Rev. 921, 923 (1985). The overwhelming and uncontroverted evidence on this record establishes that defendant has met and continues to meet this basic test.

Counsel urge that there should be a heightened test of competency in this case. Although an incompetent, as a juvenile, may be impaired by his

limited cognitive and social capacities, cf. Winick, supra, at 961 (discussing various situations in which a defendant may waive his incompetency status), Judge McFarland could not have been more unbiased, reasonable and fair in his consideration of competency. Any finding of competency necessarily entails the ability to waive certain rights beginning with the very first strains of Miranda. Id. at 961 (juveniles may validly waive both self-incrimination and right to counsel privileges). Moreover, and analogous to the threshold question of competency to stand trial, Missouri law presumes competency, as all persons are presumed to be free of mental disease or defect which would exclude their responsibility for their conduct. **Section 552.030.7,** RSMo Supp. 1984. The point is denied.

In the second point it is contended that the trier failed to consider mitigation as required by state statute, **Section 565.030.4**, RSMo Supp. 1984, and by **Eddings v. Oklahoma**, 455 U.S. 104, 110-14 (1982). This claim is not supported by the record. The trial judge clearly indicates that he considered mitigating factors in addition to defendant's age in the required trial report. Defendant was 16 years and seven months old when he murdered Nancy Allen. He was 17 years and four months old when he pleaded guilty. He had completed nine years of education and had an intelligence quotient of 105.[2]

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[2]**See: Burger v. Kemp**, ___ U.S. ___, 55 L.W. 5131, 5132, N. 1 (1987) and dissenting opinion of Powell, J., at 5143. Issue was alleged ineffective assistance of counsel. Defendant was 17-years-old at time of murder, had an I.Q. of 82, functioned at a 12-year-old level, and had possible brain damage from beatings when he was child.

The report of the trial judge shows that he considered whether the murder "was committed while the defendant was under the influence of extreme mental or emotional disturbance." **Section 565.032.3(2),** RSMo Supp. 1984. Second, he considered whether "[t]he capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired." **Section 565.032.3(6).**

Counsel suggest that the weighing of mitigating factors is a quantitative or tallying process. Clearly it is not. For example, the trier must assess the punishment in a capital murder case at life imprisonment "[i]f the trier finds the existence of one or more mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found by the trier." **Section 565.030.4(3),** RSMo Supp. 1984. Just one mitigating factor might permissibly outweigh several aggravating circumstances under this provision and require the imposition of only life imprisonment and not the death penalty. But the reverse is also true. The trier may find that at single aggravating circumstance beyond a reasonable doubt "warrant[s] imposing the death sentence." **Section 565.030.4(2).** The trier's judgment as to the appropriateness of the sentence must be guided but is still discretional. The weighing process is a qualitative one not a quantitative one. The trial court considered all the mitigating circumstances

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Thompson v. State, 724 P.2d 780 (Okla. Crim. App. 1986) (defendant 15-years-old at time of murders), **cert. granted** 107 S.Ct. 1284-85 (1987), to consider whether Eighth Amendment imposes an age limitation on the application of the death penalty.

fairly presented by the evidence and did not find that they outweighed the aggravating circumstances found beyond a reasonable doubt. The point is denied.

Counsel in point three ask us to do no more than what this Court is mandated to do. Section 565.035, RSMo Supp. 1984. The court must review whether the imposition of the death penalty was influenced by passion or prejudice, was supported by evidence of the statutory aggravating factors enumerated by the trier of fact, or was disproportionate or excessive when compared to similar cases. **See State v. Battle**, 661 S.W.2d 487, 493-95 (Mo. banc 1983), **cert. denied**, 466 U.S. 993 (1984).

The record bears no suggestion of prejudice, passion or any other arbitrary factor. The trial court's patience and fair play were well-demonstrated throughout. Similarly, the evidence supports his finding that defendant Wilkins committed the murder of Nancy Allen in a wantonly vile, horrible and inhuman manner. With cool, deliberate premeditation he remorselessly executed the prone, helpless Nancy Allen, who had ample time to consider her demise, her husband, and her one-year-old and three-year-old girls. Defendant brutally silenced her pleas for mercy. The defendant freely admits that he committed this murder during a robbery, which supports the other aggravating circumstance found by the trier. The death penalty was not influenced by passion or prejudice and the evidence supports the trial court's finding of two aggravating circumstances beyond a reasonable doubt.

Finally, we are required to consider whether this sentence of death is disproportionate to the penalty imposed in similar cases considering both the

circumstances of the crime and the defendant. State v. Foster, 700 S.W.2d 440, 445 (Mo. banc 1985), cert. denied, 106 S.Ct. 2907 (1986). The cases the Court has reviewed demonstrate the penalty of death imposed here is not excessive or disproportionate to similar cases.

In **State v. Foster**, 700 S.W.2d 440, 441 (Mo. banc 1985), defendant, with an accomplice, planned an armed robbery of the apartment of two acquaintances. The jury in **Foster** found four aggravating circumstances, including two which are essentially identical to those found in the instant case - a murder involving depravity and a murder for gain. Death was imposed. **Id.** at 445.

In **State v. Lashley**, 667 S.W.2d 712, 716 (Mo. banc), **cert. denied**, 469 U.S. 873 (1984), defendant was 17 years and one month old at the commission of the murder. Defendant with the intention of robbing the victim had stabbed the victim who did not die at the instant of attack. Lashley had been committed to various institutions and was considered to be of average intelligence. The death penalty was imposed.

In **State v. Newlon**, 627 S.W.2d 606, 609-10 (Mo. banc), **cert. denied**, 459 U.S. 884 (1982), an armed defendant entered a store with his accomplice after waiting for customers to leave so that the lone attendant would be isolated. Defendant entered knowing that the attendant might be killed after an accomplice's remark before they entered the store. The trier found that the murder was wantonly vile. **Id.** at 621. The death penalty was imposed.

See also State v. Johns, 679 S.W.2d 253 (Mo. banc 1984), **cert. denied**, 470 U.S. 1034 (1985); **State v. Byrd**, 676 S.W.2d 494 (Mo. banc 1984), **cert. denied**, 469 U.S. 1230 (1985); and **State v. Malone**, 694 S.W.2d 723 (Mo. banc 1985), **cert. denied**, 106 S.Ct. 2292 (1986).

Aside from the general principles of deterrence, defendant's execution-murder of Nancy Allen is exceptional in its brutality. Unlike any of the cited cases except **Newlon**, the evidence herein demonstrates an express preexisting plan on defendant's part to kill anyone and everyone he found at Linda's Liquors and Deli to eliminate potential witnesses. This was no spur of the moment decision on defendant's part, but planned. Although the victim in this case was immediately assaulted when the robbery began, she had a substantial time in which to anticipate her fate and to plead for her life. **Cf. State v. Newlon**, 627 S.W.2d at 622. The suffering of the victim is certainly a factor in comparing this with other cases. **State v. Smith**, 649 S.W.2d 417, 434-35 (Mo. banc), **cert. denied**, 464 U.S. 908 (1983). Even after inflicting a mortal wound upon Nancy Allen, defendant was not content to let her die. He inflicted further mutilation upon her by stabbing her repeatedly in the throat to stop her from talking. **Cf. State v. Johns**, 679 S.W.2d at 257; and **State v. Malone**, 694 S.W.2d at 724. As all of those facts demonstrate, the murder at bar is substantially more heinous than past killings which have been found to justify a sentence of death.

Another factor supporting defendant's sentence, newly recognized in Missouri's 1984 revision of the homicide statutes, is the strength of the evidence against him. **Section 565.035.3(3).** Heinous murders

have been committed in the past in which the evidence of the crime was circumstantial and the precise role of the accused in the killing was unclear; in such cases, an inference exists that the jury may have rejected a sentence of death for that reason. **See, e.g., State v. Turner**, 623 S.W.2d 4, 607 (Mo. banc 1981), **cert. denied**, 456 U.S. 931 (1982); and **State v. Mitchell**, 611 S.W.2d 223, 224-25 (Mo. banc 1981). Such is not the case here. Defendant has admitted and described in great detail his dominant role in the killing of Nancy Allen from his planning of the murder in advance to his stabbing the victim to death, and his account is corroborated by autopsy evidence and the crime scene. By definition, the evidence of defendant's guilt could not be any greater than it is in a plea of guilty.

The final and a most chilling factor to be considered is the nature of defendant himself and his attitude toward human life. In his words, Nancy Allen was a "trash can" whose most convenient disposition was to be killed so she would not be "a bother" to defendant in the future. As evidence by his actions, this statement by defendant is not mere bravado because he had made a prior and unconditional decision to kill the witnesses to his planned robberies and he had no reason to kill Nancy Allen other than the possibility that she might later testify against him. This was only one of a series of robberies and murders that defendant had intended to commit had he not been apprehended, and he had made attempts to kill people, including his mother, both before and after the Nancy Allen murder. There can be no doubt that, given defendant's attitude, he will unhesitatingly kill anyone who "gets in his way" unless and until he is prevented from doing so by the forces of civilized society. The sentence of death

imposed upon defendant is the only reliable means of achieving that aim.

The judgment is affirmed.

WILLIAM H. BILLINGS, Chief Justice

Robertson, Rendlen and Higgins, JJ., concur; Blackmar, J., dissents in separate opinion filed; Donnelly, J., dissents in separate opinion filed; Welliver, J., dissents in separate opinion filed and concurs in dissenting opinions of Blackmar and Donnelly, JJ.

Supreme Court of Missouri
en banc

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	No. 68393
	)	
HEATH A. WILKINS,	)	
	)	
Appellant.	)	

DISSENTING OPINION

For the reasons assigned by Judge Billings the points raised by appointed counsel are without substance. The trial judge is to be commended for his fair and balanced handling of a very difficult situation.

Judge Billings expounds the deliberateness and atrocity of the killing. Judge Donnelly, in his dissenting opinion, demonstrates the vagaries in jury sentencing, describing killings which are no less repulsive, but in which the jury did not assess the death penalty. He senses a tendency to assess life rather than death when the offender is very young. I cannot add to the meticulous scholarship of both of my brethren.

Section 565.035.2, RSMo 1986, effective 10-1-84, directs us to "consider the punishment . . . ." Pursuant to this obligation, I would hold that a defendant who was a juvenile at the time of the offense should not be subject to the death penalty. In **State v. Battle**, 661 S.W.2d 487, 495 (Mo. banc 1983) and

State v. Lashley, 667 S.W.2d 712, 717 (Mo. banc 1984), I argued unsuccessfully against death sentences for minors. I would draw a line at the juvenile level. Lines must be drawn somewhere; the offender below fourteen may not be punished as a criminal. See Section 211.071, RSMo 1986. The death sentence should be reserved for those capable of mature deliberation. See Ellison, State Execution of Juveniles: Defining "Youth" as a Mitigating Factor for Imposing a Sentence of Less than Death. 11 Law and Psychology Review 1 (Spring, 1987).

It is suggested that my position is contrary to state policy as defined by the legislature, inasmuch as the statutes contain no prohibition on the execution of persons who were juveniles at the time of commission of the offense. I believe that the duties imposed on us by Section 565.035.2 authorize us to adopt some objective standards for imposition of the death penalty. I also submit that our duties under that section are in addition to the duty of comparison imposed by 565.035.3, and that we should undertake a broader review of death sentences than we have in the past. I concur with Judge Donnelly as to the remaining issues discussed in his dissenting opinion.

CHARLES B. BLACKMAR, Judge

Supreme Court of Missouri
en banc

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	No. 68393
	)	
HEATH A. WILKINS,	)	
	)	
Appellant.	)	

DISSENTING OPINION

Mandatory review under section 565.035, RSMo 1986.[1]

In this case, defendant entered pleas of guilty and expressed a desire to be put to death. The Court conducts its mandatory review, §565.035, RSMo 1986, of a sentence of death, imposed following a hearing to determine punishment, § 565.032.2, RSMo Cum. Supp. 1983. For reasons stated, we reduce sentence to life

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[1]Defendant filed no after-trial motions or notice of appeal in this case. Counsel appointed to represent defendant in proceedings before this Court have briefed and argued numerous points of law. We decline to review these at this time, given our disposition of the case. We intend no suggestion as to the merit of counsel's claims which may be grounds for post-conviction relief under Rule 27.26; defendant may pursue such relief at his option.

imprisonment without possibility of probation or parole, barring executive act.

The facts are undisputed, drawn from defendant's statements to a police investigator and to the trial court during the sentencing phase, from reports and testimony of psychiatrists who examined defendant, and from the report of a presentence investigator. On the night of the fatal stabbing of Nancy Allen, defendant Wilkins was aged sixteen years, six months, twenty days. For about a month previous, he had been living on the streets of Kansas City with three other juveniles, Pat "Bo" Stevens, Roy "Shades" Thompson, and Marjorie "Midget" Filipiak. At Wilkins' initial suggestion, the foursome plotted to rob area businesses. Defendant proposed, and the group acceded to, Linda's Liquor and Deli in Avondale as an initial target. Wilkins maintained he would kill anyone present to conceal the perpetrators' identities. To facilitate his claimed objective, Wilkins purchased a narrow-bladed, martial arts knife from Stevens with money defendant had stolen from a laundromat.

As preconceived one to two weeks before, an intricate plan unfolded July 27, 1985. At or near 10:15 p.m., the four juveniles met at North Kansas City Hospital. Defendant and Stevens walked through a wooded area to the nearby deli, leaving Fillipiak and Thompson at the hospital to await their return. The two boys stalked the target from along a neighboring creek while customers transacted business in the store and left. It was nearing closing time. Around 11:00 or 11:30 p.m., toting a change of clothes apiece in defendant's handbag, the two youths executed the crime. The handbag was left outside the deli to avert suspicion; both boys wiped mud from their shoes to

avoid leaving footprints inside. Nancy Allen, the store clerk, was alone, seated behind the counter, when the boys entered. Wilkins ordered a sandwich. Stevens asked to use the restroom. When Stevens exited, he grabbed the victim, holding her while Wilkins rushed forward, produced the knife, and stabbed her in an area of her back he thought to be her kidney. Allen fell to the floor. Lying on her back, the victim responded to a question Stevens put to her, and began pleading with defendant not to kill her. Wilkins told Allen to be quiet, then stabbed her repeatedly in the chest and throat areas. Expert medical testimony indicated Mrs. Allen probably was deceased before Wilkins imparted the last wound to her body.

Stevens pilfered cash, checks, liquor, cigarettes and rolling papers from the cash register and store displays. Roughly $450.00 in cash and checks were taken. Stevens then "freaked out," and defendant had to push him out the door. Wilkins wiped Stevens' fingerprints from the doorknob before the pair made their immediate flight.

Defendant and Stevens rendezvoused with Filipiak and Thompson at the hospital. To evade any pursuit, the foursome left the hospital in cabs Filipiak summoned from two local cab companies. The juveniles rode in pairs to a Kansas City bus depot. There, they talked a while, divided the stolen cash, and the principals changed clothes. Stevens and Thompson left, again in a cab. Wilkins and Filipiak lagged behind about an hour to play video games, then left by the same means. The four met back at the lake area they frequented in Penguin Park and "tripped out." They used the stolen checks to start a fire. Defendant used his share of the money to buy drugs.

About a week later, Wilkins encouraged Stevens to lure "some guys" into the lake area so defendant could kill them. This plan was aborted when a patrolling police officer happened into the area. Wilkins threw his knife into the lake to avoid discovery. The weapon never was found.

Defendant was arrested August 10, 1985. He acquiesced to giving a statement, in which he admitted to and described in detail the deli store murder.

As indicated above, this case comes to the Court in a peculiar posture. Wilkins was certified to be tried as an adult and was appointed counsel, Mr. Frederick Duchardt. In late January or early February 1986, Wilkins informed Duchardt that he wished to withdraw an earlier plea, not guilty and not guilty by reason of mental disease or defect, and substitute pleas of guilt to all charges.[2] Defendant also expressed a desire to seek the death penalty as his punishment. Counsel refused to aid Wilkins in his sordid goal.

Two psychiatrists and a clinical psychologist investigated defendant's competence to stand trial through interviews and testing. On considering the psychiatrists' testimony at an April 16, 1986, hearing, the trial court found Wilkins competent to proceed. Wilkins immediately moved, pro se, to represent himself before the court. One week later, the court accepted

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[2]Wilkins was charged with first degree murder, § 565.020.2, RSMo 1986; armed criminal action, §571.015, RSMo 1986; and unlawful use of a weapon, § 571.030.1, RSMo 1986.

defendant's written waive of counsel.[3] Mr. Duchardt was discharged from representation, but the court ordered him to remain available to answer any legal questions defendant might have.[4]

Wilkins immediately announced his desire to enter guilty pleas to all charges. The court attempted to dissuade him, to the point of describing how lethal-gas executions were performed. Defendant was encouraged to "talk to other people about this decision you're having to make," and the cause was continued until May 9, 1986. Wilkins persisted. When the case was resumed, he offered written petitions to enter the desired pleas. After extensive questioning, during which the trial judge offered defendant every opportunity to change his mind, the pleas were accepted as to each count. Sentencing was scheduled for June 27.[5]

Wilkins was given maximum sentences for the lesser offenses: five years' imprisonment for unlawful use of a weapon, life imprisonment for armed criminal action. The court then considered evidence on the

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[3]The court constantly reminded defendant of the wisdom of professional representation throughout these proceedings.

[4]The Court commends Mr. Duchardt's service to the court below, under what undoubtedly were frustrating circumstances.

[5]Indicative of the leeway the trial judge afforded Wilkins, the court informed that in the interim it would consider any change of heart Wilkins entertained reference his plea to the murder charge. Defendant remained firm in his intention.

appropriate sentence for Nancy Allen's murder.[6] In a bizarre climax to the proceedings, both prosecutor and defendant urged the ultimate sanction. Defendant realized his goal - the court passed a sentence of death. Supporting the sentence imposed, it found as aggravating circumstances that: 1) Defendant was engaged in perpetrating a felony (robbery) when the murder was committed, § 565.032.2(11); 2) The murder was outrageously or wantonly vile, horrible or inhuman, since it reflected depravity of mind, §565.032.2(7).

Neither the record nor counsel suggest the sentence imposed reflects the least hint of passion, prejudice or arbitrariness. § 565.035.3(1), RSMo 1986. Moreover, the record supports the court's conclusions under section 565.032.2(7) & (11), RSMo 1986. We turn, therefore, to the dispositive question, "whether the sentence of death was excessive or disproportionate to the penalty imposed in similar cases, considering both the crime, the strength of the evidence and the defendant." § 565.035.3(3), RSMo 1986. Under the facts of this case, in light of Wilkins' age as of the offense, his prolific abuse of drugs and alcohol, and his long history of mental and emotional affliction, we hold the sentence excessive and disproportionate, and reduce that sentence to one of life imprisonment without possibility of probation or parole, barring executive clemency. § 565.035.5(2), RSMo 1986.

> Relevant cases for a review of the appropriateness of the sentence are those in which the judge or jury first found the

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[6]Defendant waived trial by jury for the penalty phase of his murder trial. See § 565.030.4, RSMo 1986.

> defendant guilty of capital murder and thereafter chose between death or life imprisonment without the possibility of parole for at least fifty years.

State v. Bolder, 635 S.W.2d 673, 685 (Mo. banc 1982), cert. denied, 459 U.S. 1137 (1984).

First, we consider defendant's age. In four capital cases involving youths of comparable age, a life sentence was imposed. State v. Greathouse, 627 S.W.2d 592 (Mo. 1982) (defendant age seventeen); State v. Allen, 710 S.W.2d 912 (Mo. App. 1986) (defendant age sixteen); State v. White, 694 S.W.2d 802 (Mo. App. 1985) (defendant age seventeen); State v. Scott, 651 S.W.2d 199 (Mo. App. 1983) (defendant age sixteen). Only one Missouri youth has been sentenced to die who was seventeen years old or younger as of his crime. State v. Lashley, 667 S.W.2d 712 (Mo. banc), cert. denied, 469 U.S. 873 (1984).

In Greathouse, Allen, White, and Scott, the jury was instructed on defendants' lack of prior criminal activity as a mitigating factor reference sentence. In this sense, the case sub judice is distinct.[7] But the jury was similarly instructed in State v. Battle, 661 S.W.2d 487 (Mo. banc 1983), cert. denied, 466 U.S. 993 (1984) (defendant aged eighteen years, four months; no significant history of criminal activity; death sentence affirmed), and State v. Blair, 638 S.W.2d 739 (Mo. banc

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[7]Wilkins, from an early age, engaged in arsons, burglaries, and stealing. These activities were before the court for its consideration during sentencing, embodied in Wilkins' juvenile records. § 211.321.1, RSMo 1986.

1982), cert. denied, 459 U.S. 1188, reh'g denied, 459 U.S. 1229 (1983) (defendant eighteen; same history and sentence). As to this age group of offenders, then, the absence, and thus presence, of a significant history of criminal acts may be an unreliable predicate for proportionality review. As to this age group of offenders, perhaps the most to be said is that age as a mitigating factor, § 565.030.3(7), RSMo 1986, standing alone, is insufficient to overturn a death sentence, on grounds the penalty is excessive or disproportionate, once the trier of fact has passed such sentence. State v. Lashley, 667 S.W.2d 712 (Mo. banc), cert. denied, 469 U.S. 873 (1984); State v. Battle 661 S.W.2d at 494-95.[8]

Next, we look to cases in which death was imposed on a young offender and make comparison based on the nature of the killing. In State v. Battle, 661 S.W.2d 487 (Mo. banc 1983), cert. denied, 463 U.S. 993 (1984), defendant, eighteen, stabbed an eighty-year old woman with a twelve-inch butcher knife. The mortal wound was inflicted just below the victim's left eye. The elderly woman, "naked, beaten and ravished," suffered nearly three hours before she died. The jury recommended the death penalty, after being instructed only on the "vile, horrible or inhuman" nature of the killing as an aggravating circumstance. See §

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[8]Counsel invite the Court to consider whether sentencing a minor to die constitutes a per se violation of the Eighth Amendment of the Federal Constitution. We decline. Battle and Lashley state the law in Missouri barring contrary adjudication in the United States Supreme Court. See Thompson v. Oklahoma, No. 86-6169, cert. granted, 107 S.Ct. 1284-85 (1987).

565.032.2(7), RSMo 1986. Battle is different from this case. Nancy Allen was not sexually abused before or after the murder, compare State v. White, 694 S.W.2d 802 (Mo. App. 1985) (indications victim may have been sexually molested after death; defendant, seventeen received life sentence), with sub judice and Battle; and, no evidence indicated Mrs. Allen suffered for any prolonged period after Wilkins attacked her. Indeed, the coroner indicated she may have been dead by the time defendant imparted the last wound. Certainly this killing, however senseless, was no more repulsive than those involved in State v. Beck, 687 S.W.2d 155 (Mo. banc 1985), cert. denied, 106 S.Ct. 2245 (1986) (nineteen-year old shot and killed elderly couple; life sentence); State v. Greathouse, 627 S.W.2d 592 (Mo. 1982) (seventeen-year old struck uncle with ax, then shot him eight times; life sentence); State v. Baskerville, 616 S.W.2d 839 (Mo. 1982) (Nineteen-year old; triple-murder; life sentence); State v. Allen, 710 S.W.2d 912 (Mo. App. 1986) (sixteen-year old, given life imprisonment; insisted after robbing couple, aged 67 and 68, that they be killed "the way Muslims kill people --by tying 'their ankles [?] to their feet'", laying each on stomach, then stabbing each in back of neck); State v. Hurt, 668 S.W.2d 206 (Mo. App. 1984) (nineteen-year old, penitentiary inmate, killed cellmate by stabbing him more than sixty times; life term imposed); State v. Scott, 651 S.W.2d 199 (Mo. App. 1983) (sixteen-year old; life imprisonment; robbed elderly couple at gunpoint, then stabbed wife twenty-two times; husband, also stabbed multiple times, survived).

In State v. Lashley, 678 S.W.2d 712 (Mo. banc), cert. denied, 469 U.S. 873 (1984), the victim was stabbed in an area of her head where a section of skull had been surgically removed, exposing a "soft spot."

Defendant was "seventeen years and one month old" as of the killing. His motive was to rob his fifty-five-year old, handicapped cousin; he did so in a manner described as "classic lying in wait." Id. at 716. Wilkins' crime fits this genre. See § 565.032.2(4), RSMo 1986. But more is involved here, making Lashley distinct.[9] In none of the above, Lashley, Battle, Blair, Beck, Greathouse, Baskerville, Allen, Scott, Hurt, or White, was the nature of the defendant such as to raise serious question, as here, whether the defendant should be held so completely responsible for his conduct that we should affirm his sentence.[10]

At age ten, Wilkins was referred to Tri-County Mental Health Center. For the next four to five years, excepting a seven-month probationary period at home, defendant underwent evaluation, treatment and detention at various Missouri institutions. He was diagnosed as possessing a borderline personality,

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[9]We also note "the issue . . . is not whether any similar case can be found in which the jury imposed a [death] sentence, but whether the death sentence is excessive or disproportionate in light of 'similar cases' as a whole." State v. Mallett, ___ S.W.2d ___, ___ (Mo. banc 1987) (No. 68030, decided June 16, 1987) (slip op. at 32-33).

[10]We do not ignore the carefully-planned and carefully-executed nature of this heinous offense. Nor do we take lightly defendant's apparent disregard for the lives of others. We find only that Wilkins' age, his mental and emotional instability, and extensive drug use coagulate, inseparably, to quicken the conclusion, in our view the only conclusion, that the ultimate price is an excessive one to be levied on this defendant.

schizotypal personality, and perhaps developing schizophrenia.[11] He was withdrawn, isolated, depressed, impulsive, displaying intermittent episodes of paranoid functioning. On at least two occasions, he was prescribed antipsychotic medication. Officials at Crittenton Center expressed concern that defendant was at risk for violent, destructive, or self-destructive acts.[12] Indeed, Wilkins had on a number of occasions attempted suicide by cutting his wrist, overdosing on medication or illegal drugs, and leaping from a bridge into the path of a passing car.

Dr. Logan, who examined defendant to determine his competence to proceed below, intimated that Wilkins' heavy drug use was tied to his cognitive functioning.[13] Dr. Parwatikar, who interviewed Wilkins

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[11]Wilkins' brother was diagnosed a schizophrenic in 1982. His father was committed for a period of time in an Arkansas mental facility. On these bases, one examing psychiatrist suggested defendant's dysfunctioning may have a genetic component.

[12]Examining psychiatrist William Logan indicated these actions were intimately bound with defendant's disorder.

[13]Defendant had used marijuana since he was five. He had abused inhalants, stimulants and depressants since age six. In the three summers prior to 1981, he estimated he had inhaled gasoline fumes on about 500 occasions. Since at least age ten or eleven, Wilkins had used LSD, by admission his favorite drug. On July 27, 1985, defendant ingested a home-made strain of the drug three times,

at this Court's instance to determine his competency to waive appellate counsel, suggested defendant's youth, in turn, was a feature which distinguished his mental and emotional make-up from a mere antisocial condition.

Dr. Logan testified below that Wilkins "suffered from an ongoing emotional disturbance" of "profound" proportion; he reported that defendant's actions on July 27, 1985, could not be divorced from his psychopathology. Even though Wilkins' condition could not be termed a legally recognized mental disease or defect, Chapter 552, RSMo 1986, Logan submitted in his report that:

> This is not to say that defendant did not suffer from significant impairment in his mental functioning as a result of mental disease which at the time of the crime hindered his emotional realization of the nature, quality, and wrongfulness of his conduct, and hindered his cognitive control of his conduct . . . "

On these facts, considering defendant's age, and his significant cognitive-emotional disorder, and connected, extensive drug abuse, we hold the sentence excessive and disproportionate. Consistent with this holding, we reduce Wilkins' sentence to life

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significant only to the extent it was a product of Wilkins' disorder, and to the extent it lends greater force to our conclusion, considered in tandem with the other factors we find persuasive in reducing sentence.

imprisonment without possibility of probation or parole barring executive act.[14]

After argument and submission, this cause was assigned to me for opinion. That opinion, which is set forth above, was rejected by the majority of the Court.

I respectfully dissent.

Robert T. Donnelly, Judge

[14]Defendant's desire to obtain the death penalty is noteworthy only in that we find it impertinent to this or any review under section 565.035. This Court will not permit a defendant to employ the judicial process as a vehicle for state-aided suicide.

Supreme Court of Missouri
en banc

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	No. 68393
	)	
HEATH A. WILKINS,	)	
	)	
Appellant.	)	

DISSENTING OPINION

I respectfully dissent. The principal opinion treats this case as though it were here on appeal, which it is not, and in my opinion, glosses over our statutory duty to make examination as to proportionality of the sentence. § 565.035.3(3), RSMo 1986. I concur in the separate dissenting opinion of Blackmar, J. and the separate dissenting opinion of Donnelly, J.

The record before us is a documentary of defendant-"appellant's" exposure to and his failure to respond to almost every known social program of this society during the first almost seventeen years of his life. Regardless of the current belief of many that the death penalty is a deterrent to crime, utilization of the death penalty in cases such as this only serves to bury and cover up the failures of our existing social and penal programs. The death penalty was never intended to punish crimes committed by juveniles and is totally disproportionative to the punishment of similar crimes committed by those of similar age. See cases cited in

separate opinions of Donnelly, J. and Blackmar, J. The punishment should be reduced to life imprisonment.

WARREN D. WELLIVER, Judge

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	CASE NO. 68393
	)	
HEATH A WILKINS,	)	
	)	
DEFENDANT.	)	

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI, AT LIBERTY
SEVENTH JUDICIAL CIRCUIT - DIVISION ONE
HONORABLE GLENNON E. McFARLAND - JUDGE

STATE OF MISSOURI,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	CASE NO. CR185-491FX,
	)	492FX & 493FX
HEATH A WILKINS,	)	
	)	
DEFENDANT.	)	

TRANSCRIPT OF PROCEEDINGS ON PLEA OF GUILTY AND SENTENCE OF DEATH

APPEARANCES:

FOR STATE	FOR DEFENDANT
MR. LARRY HARMAN AND MR. JAMES B. CHANCELLOR AND MICHAEL WRIGHT PROSECUTING ATTORNEY'S OFFICE CLAY COUNTY LIBERTY, MISSOURI 64068	MR. FRED DUCHARDT PUBLIC DEFENDER CLAY COUNTY LIBERTY, MO 64068 AND DEFENDANT PRO SE

Jerry W. Davis
Official Court Reporter
Division One, Seventh Judicial Circuit
Liberty, Missouri

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The following proceedings came on before the Honorable Glennon E. McFarland, Judge of Division One of the Seventh Judicial Circuit of Missouri, at Liberty, on Thursday, October 17th, 1985.

The Defendant appeared in person and by attorney, Mr. Fred Duchardt.

The following proceedings were had:

(State announces ready for trial on all cases set for arraignment.)

ARRAIGNMENT

THE COURT: CR185-492, 490, and 491, State versus Heath Wilkins, also known as Pyzon.

MR. DUCHARDT: Good morning, your Honor.

THE COURT: Good morning.
Are you Heath A. Wilkins?

DEFENDANT: Yes, sir.

THE COURT: Mr. Wilkins, of course you have a right to remain silent. You do not have to incriminate yourself. Whatever you say can and will be used against you through the entire proceeding.

Mr. Duchardt, are you ready to proceed with arraignment?

MR. DUCHARDT: Yes, your Honor. I would ask that the charges be read to Mr. Wilkins.

THE COURT: In the first case, that being CR185-491FX, Mr. Wilkins, you're charged by information of the prosecuting attorney's office charging that you have committed the Class "A" felony of murder in the first degree in that on or about July 27th, 1985, in Clay County, Missouri, that you after deliberation knowingly caused the death of Nancy Allen by stabbing her.

MR. DUCHARDT: Judge, as to that charge Defendant would enter a dual plea of not guilty by reason of mental disease or defect excluding responsibility, and not guilty.

I would ask leave at this time to file with the court a motion for mental examination and a proposed order in that regard.

THE COURT: Do you want this set for any particular day?

MR. DUCHARDT: Judge, I'm not certain, under the circumstances there is some question in my mind of whether Mr. Wilkins is competent to proceed at this point.

The court may very well wish to go ahead and set a date for sure.

THE COURT: I'll set it for the 27th of January then so we don't forget him.

He probably will be back from the state hospital by then, I presume.

MR. DUCHARDT: I'd presume so.

THE COURT: I've made this entry, "Comes now State by assistant prosecutor and defendant in person and by attorney, Fred Duchardt. Defendant arraigned and defendant enters plea of not guilty and not guilty by reason of mental disease or defect excluding responsibility. State announces ready and cause set for trial the 27th day of January, 1986, at 9 o'clock a.m. Defendant ordered to appear for docket call on January 22nd, 1986, at 9 o'clock a.m.

Ordered that defendant be examined at state hospital as per entry filed."

(Defendant arraigned in case number CR185-490 FX and CR185-492FX and enters plea of not guilty by reason of mental disease or defect excluding responsibility and not guilty and cases set for trial on the 27th day of January, 1986, with docket call set for January 22nd, 1986.)

* * * * * * * * * * *

DOCKET SHEET ENTRY

"Dec 23 1985 Comes now State by assistant prosecuting attorney and defendant in person and by attorney, Kevin Rotert. Copy of report from state hospital given to defendant. Defendant granted leave to have further examination at defendant's cost."

* * * * * * * * * * *

The following proceedings came on before the Honorable Glennon E. McFarland, Judge of Division One of the Seventh Judicial Circuit of Missouri, on Wednesday, the 16th day of April, 1986.

The defendant appeared in person throughout these entire proceedings and by Mr. Fred Duchardt.

THE COURT: CR185-490, 491, and 492, State versus Heath Wilkins, also known as Pyzon in each case.

You may call your first witness. This is in regard to----

MR. CHANCELLOR: His competency to stand trial, I believe, your Honor.

THE COURT: And this is in regard to the defendant's competency to stand trial, is that correct?

MR. DUCHARDT: Judge, as you'll recall we filed a motion asking for a determination of both issues, both competency to proceed and competency at the time of the alleged offense.

And Doctor Steven Mandracchia of the Western Missouri Mental Health Center completed a report and filed same with the Court.

And then upon my request the Court allowed an independent psychiatric examination be conducted. And Doctor William Logan of the Menninger Foundation completed that report. That's the one that you have there in your hand.

My proposal is that the Court, I think the Court initially needs to take up the issue as to competency to proceed.

I think that the two issues are probably intermingled, so we'll probably go into some of the matters concerning both, but---

THE COURT: And you think it's in my province now to determine his mental competency at the time of the alleged offense?

MR. DUCHARDT: No, sir, that's what the motion was concerning and that was, and what the reports concern.

THE COURT: Very well.

MR. DUCHARDT: And they concern both. But, as is recognized under the statute, but the only thing I was saying is that because of the intermingling of the issues we'll probably get into both.

But, I think the only determination that needs be made at this point is Mr. Wilkins' competence.

THE COURT: Very well. You may proceed, whichever side wishes to proceed.

MR. DUCHARDT: I'll take the lead.

MR. CHANCELLOR: Go right ahead.

DEFENDANT'S EVIDENCE ON DEFENDANT'S COMPETENCY

DR. STEVEN A. MANDRACCHIA, being first duly sworn by the deputy circuit clerk, testified as follows:

DIRECT EXAMINATION BY MR. DUCHARDT

Q. Doctor Mandracchia, would you state your name, please, for the court?

A. Steven Mandracchia.

Q. And your occupation, sir?

A. I'm a clinical psychologist for the State of Missouri, Department of Mental Health.

Q. And where are you practicing at present?

A. At the Western Missouri Mental Health Center on 22nd Street, Kansas City.

Q. And how long have you been there, sir?

A. Since July of 1982.

Q. You have testified in this court before as an expert in the field of psychology, is that correct, sir?

A. Yes, I have.

Q. What I wanted to do was go into your examination of Heath Wilkins pursuant to this Court's order. Do you recall doing that?

A. Yes, I do.

Q. And could you tell the Court when you spoke with Mr. Wilkins and had an opportunity to examine him pursuant to the Court's order?

A. Okay, I saw Mr. Wilkins in January, excuse me, in November, 1985.

Q. All right, sir.

A. November 27th, 1985.

Q. Would you describe the setting and the circumstances under which you spoke with Mr. Wilkins?

A. Mr. Wilkins was escorted to our hospital and to my office in the hospital by jail officials. And we engaged in a clinical examination, personal interview, mental status examination pertaining to issues requested by the Court order.

Q. All right, sir, how long of a time did you yourself have an opportunity to speak with Mr. Wilkins?

A. We were together in a clinical interview for approximately an hour and thirty-five minutes.

Q. All right, sir. And did you or one of your staff members conduct any psychological testing or anything of that sort?

A. Yes, psychological testing was performed, I believe immediately afterwards.

Q. All right, sir, and what were the psychological tests that were performed?

A. Mr. Wilkins was given the Minnesota Muliphasic Personality Inventory, known as the MMPI.

Q. All right, sir. Any other psychological testing?

A. Not that I recall.

Q. Any type of physical testing of Mr. Wilkins that was done?

A. No, we rely purely on background information, past medical records, and physical examinations.

Q. All right, sir. You also, I believe, were provided some information by my office concerning past history of psychological problems for Mr. Wilkins, is that correct, sir?

A. That's correct.

Q. Could you described briefly the types of information that was provided to you in that regard?

A. The types of information was primarily from residential treatment centers, youth homes, and whatever psychological, psychiatric, education and psycho-social evaluations were done at their request.

Q. All right, sir. And I believe you were also provided with a copy of the police reports concerning the incident, is that correct, sir?

A. That's correct.

Q. Any other information other than those things that I described that were provided to you to assist you in making your findings for the Court?

A. Well, I assume that the information that I reviewed from treatment centers was all from your office.

The only other thing would be a psychiatric social worker's report that was done in our office solely, specifically for this evaluation.

Q. All right, sir. Based on the information that was provided to you, did you determine whether or not in your opinion Heath Wilkins is suffering from any type of mental disease or illness?

A. Yes, I did.

Q. All right, and what was your determination or opinion in that regard, sir?

A. My opinion was that there was no evidence of mental disease or defect as defined by Chapter 552 of the Revised Statues of the State of Missouri.

Q. How about any type of mental illness as would be recognized by your profession but not necessarily cognizable under Chapter 552?

A. I made no opinion of that.

Q. Do you have an opinion as to that?

A. I could form an opinion which would basically be to agree with the past treatment records and past psychiatric and psychological diagnosis.

Q. All right, sir. At this time do you have an opinion as to Mr. Wilkins' competency to proceed before Judge McFarland in the proceedings heretofore?

A. Yes, I do.

Q. And what is that opinion, sir?

A. My opinion, qualified by my saying based on the evaluation that was performed in November and information available to me then, was that he is competent to proceed.

Q. Okay. Has information come to your, come to your knowledge at this time that would make you doubt that initial finding?

A. No, nothing.

Q. Specifically, I've informed you concerning Mr. Wilkins' desire to, putting it simply, plead guilty and attempt to receive the death penalty on his behalf. I have related that information to you, have I not?

A. Yes, you have.

Q. In light of that additional information, does that affect your opinion as to Mr. Wilkins' competency to proceed?

A. No, it does not.

Q. At this time do you feel that he has a full understanding of the charge against him and a full understanding of the nature and

consequences of his actions should he choose to enter a plea of guilty as he has indicated he wishes to do?

A. I don't understand, if you could rephrase that for me?

Q. I'm asking it that way specifically for a reason. Do you feel that he has the full understanding of what he is doing, or do you feel that his understanding of things is somewhat limited, though possibly he might have the ability recognized under law to proceed, do you feel that he has some limited capabilities of understanding, some limitations on his capabilities?

A. I, no, I don't feel that he has any psychological or intellectual or cognitive limitations on his capabilities, no.

Q. All right, sir. So, putting it simply, as you put it in your report, you do believe that he is at this time that he is competent to proceed to trial?

A. Yes, I do.

Q. Without any reservations, or do you have some reservations concerning it?

A. I would rather address particular reservations, but as a general statement, no, there are no cautions or reservations that I think, that I'm aware of.

Q. No, I'm asking specifically if you, if you are making that finding with any reservations on your part, or if it's, if you're confident in that finding?

A. I'm confident in that finding.

MR. DUCHARDT: Nothing further at this time, your honor.

CROSS-EXAMINATION BY MR. CHANCELLOR:

Q. Doctor, do you feel confident that the defendant knows if he does enter a plea of guilty to at least the murder charge that he knows he can receive the death penalty?

A. Yes, I believe he knows he can receive the death penalty, yes.

Q. And that he, it has been raised that he wants to receive the death penalty, is that right?

A. That, Mr. Duchardt had informed me of that.

Q. And, again, you feel that he is competent to proceed with whatever plea is made?

A. I'm sorry?

Q. You do feel he's competent to proceed with whatever plea, whatever decision that he wants?

A. Again, I'm not understanding, competent to proceed with his decision?

Q. Do you think----

A. Do you mean is he competent to make, to arrive at that decision?

Q. Yes.

A. Yes.

MR. CHANCELLOR: Okay. I have no further questions.

MR. DUCHARDT: Nothing further of the doctor at this time.

THE COURT: You may step down, call your next.

(witness excused.)

(Court takes up another matter on the docket.)

(The following proceedings were had with all parties present as hereinbefore.)

THE COURT: Back to CR185-490, 491, and 492, State versus Heath Wilkins, also known as Pyzon.

Are you ready to proceed?

MR. DUCHARDT: Yes, sir.

THE COURT: Call your next witness.

DR. WILLIAM S. LOGAN, being first duly sworn by the deputy circuit clerk, testified as follows:

DIRECT EXAMINATION BY MR. DUCHARDT:

Q. Doctor Logan, would you state your name, please?

A. William S. Logan, M.D.

Q. And your occupation, sir?

A. Psychiatrist and Director of Law and Psychiatry at the Menninger Foundation.

Q. All right, sir. Would you briefly give your medical background for the Judge and your practical experience background so that he'll be aware of those things?

A. My undergraduate degrees were from New Mexico State University in microbiology and psychology in 1972.

I graduated from medical school at the University of Texas Health Science Center in Dallas in 1977. I completed four years of psychiatry residency between 1977 and 1981 at Timberlawn Psychiatric Hospital also located in Dallas.

For three years following that I was the forensic psychiatrist at the United States Medical Center for Federal Prisoners in Springfield, Missouri, where I did these types of evaluations for the federal district courts around the country.

From mid 1984 until mid 1985 I did a fellowship in forensic psychiatry at the Menninger Foundation. And then in July 1985 I became the

Director of the Law and Psychiatry department of the Menninger Foundation.

Q. All right, sir. And did I contact you and request that you conduct an evaluation of Heath Wilkins concerning his competency to stand trial and his competency at the time of the offense pursuant to the dictates of Chapter 552 of the Revised Statutes of Missouri?

A. Yes.

Q. All right, sir. And would you describe to Judge McFarland what steps that you took in conducting your evaluation of Mr. Wilkins?

A. The first step was a psychiatric interview which took place, I believe it was on March 20th, for five hours where I covered his past history, the circumstances surrounding the current event, and an evaluation of his mental status.

Also an associate from the Menninger Foundation, Doctor Melvin Berg, came in and conducted about six hours of psychological tests.

The tests he conducted, I believe, included the Thematic Apperception Test, the Rorschach test, Animal Choice test, and an intelligence test abbreviated the WAIS-R, or Wechsler Adult Intelligence Scale, Revised.

That took around six hours and was administered two days later on March 22nd, 1986.

There were also a number of records that were reviewed in conjunction with the evaluation, including evaluation records that went back as far as August of 1979 where he was evaluated at the Platte County Mental Health Center.

And that was followed by an inpatient evaluation at the Western Missouri Mental Health Center.

For the next three and a half years there were, he was at the Butterfield Youth Services. Their records were quite extensive and included progress reports, letters to the court, psychological testing, school records, psychiatric records, and a discharge summary.

And he then for about a six month period of time from May of '83 until November of '83 was at the Crittendon Center in Kansas City.

They likewise included school records, psychological testing, psychiatric evaluations. And, finally, there was an evaluation in December of 1985 from Western Missouri Mental Health Center.

Q. All right, sir. And on the basis of your personal contacts with Mr. Wilkins and the information provided you, both by Doctor Berg and also the data that you're describing, did you reach a conclusion based upon that information as to your opinion as to Mr. Wilkins' competency to proceed in these proceedings before Judge McFarland?

A. I did not reach a definite conclusion.

Q. And that was what I was going to get to. And I'll just let you put it in your own words as to the opinion which, the opinions which you drew on the basis of everything that you saw. And I'll just leave it to you to go ahead and describe that.

A. Looking at the specific issue of his competency to proceed, I looked at both his cognitive understanding of the issues involved and his emotional understanding, particularly his cognitive understanding of the issues involved in being competent to stand trial seemed to be intact.

These would be things such as what the actual charges were against him, how well he understood those. He understood what he was being charged with in this Court.

He understood the potential penalty if he was convicted, particularly in this case that he could receive the death penalty.

He additionally knew the pleas that were open to him. He knew the roles of the various officers of the court and what their function was, what their purpose was in the courtroom.

He had a general layman's appreciation of the phrase, court proceedings, that would take place.

In terms of being able to cooperate with his attorney, his memory was sufficient to give a

fairly accurate and detailed recounting of the events which happened around the time that would allow his attorney to prepare a defense.

He also seemed to have a fairly good working relationship with his attorney with one exception.

Emotionally he indicated that he wanted to plead guilty and receive the death penalty. In this regard he did not see his attorney as working in his own best interest but really working against his own interests.

His wish to die was based in part upon some discouragement and depression about his current situation. Some of that discouragement and depression is seemed justifiable.

He did not want to go to a prison or to a mental institution. He'd had quite a bit of experience with mental institutions in the past and had no desire to return there.

He also felt that he was a liability to several of the other defendants in the case. And, finally, that he deserved to die.

There were several factual errors, not delusions but just errors of fact. He thought that his girlfriend was being charged with a lessor crime and that she actually did, by him pleading guilty he would, and being executed, he would get out of her life and allow her to detach and sort of go on with her own life.

He also expressed a good deal of guilt about his destructiveness, particularly in damaging his girlfriend and the other two or three co-defendants, she being one of them. And also the damage that he'd brought upon the victim.

He did not see any viable alternatives for himself and described being incarcerated for a long period of time as being like tortured.

He did not really have an appreciation of the extent to which society may have an interest in his existence in the case or the fact that others may have concerns about his, about his plea.

He primarily saw his wanting to enter a plea of guilty and receive the death sentence as an exercise of his own personal freedom to make that kind of choice without any other kinds of considerations being really entertained.

So, to some degree this is a very impulsive individual who really doesn't think through the consequences of some of his decisions. And that may apply also in this case in the sense that he had little appreciation of the appellate process in the death penalty or appreciation of the fact that down the line the, his sentence might be overturned by a higher court.

So, he had no realization that he would be spending quite a bit of time on death row even if he took this matter. He seemed to think that the

imposition of sentence would be rather immediate and that he would be able to get out of a period of incarceration which he found distasteful.

So, for those, to that extent there seems some emotional impairment where he would not be acting in necessarily his own best interests.

So, really, weighing the two factors, he has a fairly good cognitive and rational understanding of what court procedures are about, but there are some emotional things involved that could interfere with his decision making process at certain critical points.

That being the case, I thought it would be better to describe both and leave the decision to the proper person, the judge in the case.

Q. All right, sir. Specifically about the impulsivity, Doctor Berg described this in some considerable detail, am I correct, in his report?

A. Yes.

Q. Specifically indicating that in various of the psychological tests, that basically the impulsiveness which he described is demonstrated.

Could you describe how those tests which Doctor Berg ran and the conclusions which he drew jive with what you were just describing for the Court?

A. Well, I don't think I reviewed his testing specifically to give a presentation on those issues, but, briefly looking over his report, one of the things in looking at his intellectual functioning, particularly on the intelligence test, his answers to questions were very impulsive. He just sort of did them in a very glib manner. He didn't really channel much thought or put much effort into his answers.

There was a wide discrepancy between what we call his verbal I.Q. and his performance I.Q., which really reflects a very impuslive, poorly thought out kind of cognitive style.

I think that was the one area where it really showed up most prominently is, was in trying to answer questions on an intelligence test that required some thought and some ability to work and synthesize material.

Either he was, one, not able to do that, or, two he had the ability but had never practiced doing that, and, so, he was not good at doing that. Or, three, he had no desire to do that, or a combination of those.

Q. Would it be a fair statement, and I'm kinda paraphrasing a little bit from Doctor Berg's report, but while Mr. Wilkins may very well have the cognitive abilities, because of his background and emotional development and upbringing, to the extent that he's got them he doesn't use them, is that, would that be a fair way of putting it?

A. Yes, he's really had no kind of supervision or tutoring or guidance in terms of how to use his mind to make rational common sense decisions.

Q. And, so, is it a fair statement that you describe, you kind of do a dual situation in describing his competency to proceed; one on the cognitive side and one on the emotional side.

Is it a fair statement that Mr. Wilkins is really operating on that emotional side that you've described rather than in a cognitive manner?

A. I think in terms of when it comes to making sort of critical decisions he's very easily frustrated and prone to give out and just take the quick, easy solution primarily based on how he feels and not on what he thinks or what might be the wisest course of action.

Q. And is this situation that both you and Doctor Berg detected, is that also borne out in the other information from Mr. Wilkins' stays in the other psychiatric settings that he's had?

A. Yes, and also at the local Butterfield Youth Services where he was engaged in school work. And they reviewed that on a regular basis. And they found that he didn't have much of an ability to retain things that he read, that he wouldn't do homework, that he wouldn't focus his attention to any great length of time on anything that required some mental discipline.

Q. Now, in your findings and recommendations, both on your cover page of your report and also later in the report, you indicate a need for extensive inpatient treatment for Mr. Wilkins.

Could you describe what type of situation that you would, in more detail anyway, what type of situation you would feel that he would need?

A. Very early on Mr. Wilkins was evaluated by psychologists at Tri-County Mental Health Center. They noticed, and this would've been about age 10, they noted the presence of both some homicidal potential in this young man and some suicidal potential.

A psychologist at that point felt that he really needed pretty intensive psychotherapy, somebody who was pretty skilled and who could see this boy on a very regular basis and start to work through some of those conflicts, particularly those surrounding his family life, especially his mother whom he had contemplated killing and actually had made some preparation toward killing her even at the age of 10.

It was finally determined about six months later that he should go to Butterfield Youth Services. But, the type of treatment he received there, although it had some structure to it, was mostly a, what we call an milieu treatment.

In other words they have a number of activities and your privilege level depends pretty much on your behavior. You're rewarded for

good behavior and you're punished for poor behavior.

The records reflect that he did have some counseling, but this was not with a highly skilled person. He went through the privilege system at times doing better, at times doing worse.

He did not want to talk about his family situation. And that was really never discussed. And his family was pretty much uninvolved in any kind of treatment with him.

In order to make some kind of difference in this man's life, he would have to be not only placed in a fairly secure setting where he couldn't dispel his frustrations and anxieties and depression through drug taking as he did at the youth home, or through thefts or other kinds of sort of dangerous, risk taking activities, things that would provide some kind of excitement, that would have to be curtailed.

Then if that was curtailed he would show major depression and you would have something you could work with on a fairly intensive basis in psychotherapy.

Even under this kind of treatment program the prognosis would be poor due to the chronicity of this young man's problems which began, at least as far as we can tell, at the age of 5 or 6, if not before.

But, this type of treatment would offer whatever hope there is for some kind of improvement in his personality.

Q. Again, just so that I can make sure that I understand and the record will properly reflect it, the type of treatment that you're talking about that Mr. Wilkins needs was proposed as early on as age 10 and just never, for one reason or another, wasn't delivered, just was never, never actually utilized, is that correct?

A. They, he was placed in the usual facilities for kids who have problems at that age. His problems were more severe than that system was able to effectively treat.

Q. And, specifically, in the reporting they acknowledge it, their failure in that regard, is that correct, sir?

A. Particularly the psychiatrist at the Butterfield Youth Services who had contact with Mr. Wilkins over about a three and a half year period noted that they had never really made contact with him, particularly, specifically, rather, he said that he doubted that he had been involved, perhaps, as early as the beginning of his treatment there.

His behavior, in fact, deteriorated at the Butterfield Youth Services Program over that three and a half year period. Initially they described him as being a somewhat an outgoing person who was friendly.

His prior history reflected that in school he had not been a major behavior problem. Over the ensuing several years he became a major behavioral problem. He became withdrawn. His drug abuse, if anything, increased to the point where there was frequent use of hallucinogens and inhalants, things like gasoline, locker room cleaner, and other types of things.

His I.Q. actually decreased during that period around twenty points, I suspect from drug usage and inhalant abuse particularly causes brain damage.

MR. DUCHARDT: No further questions at his time, your honor.

CROSS EXAMINATION BY MR. CHANCELLOR:

Q. What did you find his intelligence level to be now?

A. His intelligence level now is, overall is in the average range. His performance level is actually in the above average, but his verbal skills it's sort of in the low normal range.

Q. Okay. So----

A. Not in a range that would render him incompetent to stand trial on that basis.

Q. Okay. So, intelligence wise he is average, above average, in that range?

A. His verbal skills, which are the, primarily the ones, the skills that would be utilized in this kind of setting, are in the, oh, lower end of the normal range.

Q. Now, awhile ago when Mr. Duchardt talked to you, by the way, when you talked to him you knew that he was seeking the death penalty, didn't you?

A. He told me that.

Q. Okay. And he had made this decision a few months ago. I don't know whether you knew that or not?

A. I didn't know when he had made the decision.

Q. And then in Mr. Duchardt's office awhile ago you compared this to possibly like a cancer patient. Could you explain that to the Judge?

A. Yes. This tends to be a fairly difficult kind of situation to deal with in a legal setting because there is often not a lot of familiarity with it.

And an analogy that I draw upon out of my own medical experience would be that of the terminal cancer patient who is faced with a rather poor prognosis, but maybe a slim possibility of some hope but with extensive, often painful chemotherapy or radiation.

But, they decide that they don't want to go through that, that the chances are not good enough. They are depressed and discouraged

and refuse treatment and say I'd rather just go ahead and die.

In some ways that's the situation Mr. Wilkins finds himself in, realizing to some degree or extent his problems, feeling some guilt and remorse and depression for what has happened, and seeing a fairly bleak future for himself and not wanting to undergo the, what he described as torture of long term incarceration, he has elected not to put up a defense but rather would plead guilty to the charges.

Q. But, do you see this as some sort of a logical decision by him?

A. The distinction, I suppose, becomes one of whether it's a rational decision. And that I will leave to wiser souls than I. But, it makes sense on the surface of it if viewed from the one perspective.

Q. Okay. In other words he'd rather spend as little time in prison as possible and take the death penalty and not go through what he thinks would be the torture of life in prison, is that, is that kinda the bottom line?

A. Roughly, yes, with the additional component that I do not believe he has a very good understanding of the fact that even if he were to take that route he would still spend a considerable amount of time in terms of years on death row.

He seemed to expect that the sentence would be rather, administered rather quickly and would not involve a lot of waiting.

Q. Well, that may or may not be, you know, we don't know how many years.

A. But it won't be done next month. I believe that was more of the term he was thinking of.

Q. As far as a, him suffering from a mental disease or defect at the time of the commission of the crime; what's your opinion as to that?

A. I certainly saw him as being psychiatrically ill and there were a number of diagnosis that I described in my report.

The definitions under the laws of Missouri usually reflect a severe thought disorder or a mood disorder, what we call an affective disorder perhaps to the extent where someone is so psychotic at the time they're totally out of touch with reality.

I did not see him, although despite his, you know, the plethora of his mental difficulties, as really falling under that particular definition.

Q. So, are you saying that at the time of the crime that he was not suffering from a mental disease or defect which would render him incapable of appreciating the nature, quality, or wrongfulness of his acts or being able to form his conducts to the requirements of the law?

A. One, I didn't see him as meeting the criteria for a severe mental illness as defined under the Statutes of Missouri.

Assuming that he had met that criteria, the execution of the crime was very puposeful, very deliberate, very well planned. And that showed that he, there are numerous efforts to avoid discovery or detection, showing that he appreciated the wrongfulness of it and also appreciated in a limited way the nature and the consequences of his action in the sense that he was committing a robbery for some profit and performing a murder in the course of that robbery so there would not be any witness.

In terms of really emotionally appreciating the fact that he was killing another human being and a human being with a family and a right to live, he didn't seem to have that kind of appreciation.

Q. In other words it was in your report, and you said, I believe, at the time he murdered this lady he did have no emotion for her, is that what you're saying?

A. Yes. And throughout his history there has been really a characteristic, a pronounced charcteristic that this person has been unable to connect with other people, really to see them as separate human beings that can be rewarding in his life.

He really sees them as someone who can only get in his way and someone he either needs to avoid or eliminate.

Q. I believe he used the analogy of a trash can. Could you tell the Judge what that was?

A. In reporting his thinking at the time, he gave the analogy that he had already thought through his actions and that he did not know this lady personally but had decided that whenever he committed this robbery that he would kill whoever was in the, waiting in the store.

He gave the analogy that if one comes across a trash can and walks around it it may be there in the future to get in your way, but if you kick it and get it out of the way then it's no longer a bother to you.

MR. CHANCELLOR: No further questions.

MR. DUCHARDT: Just one or two more.

REDIRECT EXAMINATION BY MR. DUCHARDT:

Q. Doctor, I just want to make certain. Of course, the component that Mr. Chancellor is talknig about, about the terminally ill patient, is one that you discussed with both of us, is that correct, sir?

A. That's correct.

Q. But, that, I guess maybe the best way of describing it is that while that is one way of looking at it, it's not necessarily the only place that Mr. Wilkins is coming from, is that a fair statement? In other words, he is, while he expresses that, there are some other things

which you have described as the emotional component of his capacity to understand the proceedings that are also there as well. There may be a logical framework to it that's described there, but there is a somewhat illogical emotional component to it as well, is that fair statement?

A. Going back to the analogy of, say, the cancer patient is that they may be in a geat deal of pain. They may be emotionally distressed and that may bear in a significant manner on their desire to give up.

Perhaps with encouragement they may be a small, slight chance of survival. This man doesn't know if he will be able to adjust in prison, for example, and be able to find some gratification there.

It may be that some court procedure will successfully reduce his sentence at some point in the future in the same way that chemotherapy might be effective for a small number of cancer patients.

Without some encouragement in that direction it's unlikely that he will go for that small chance. And, so, that becomes a real difficult question of how much you pursue and how much you encourage and how much, or how much you accept and simply let go is the person's own decision.

Q. And, really, that type of analogy comes from, again, drawing from your analogy, as the two components of this issue, whether he's

competent to proceed, the cognitive side, as opposed to the emotional side; what you're describing, the cancer patient would come from what of the cognitive side is available to him, would that be a fair statement? That's really to an extent a thinking out of it as opposed to the emotional component that you talked about.

A. Well, it's a thinking out of it to the extent that the person is in a great deal of pain and that pain and emotional distress acts as somewhat of a coercional force on the thought process.

And that being the case, they may think it's more expedient or that they don't want to put up with the frustration of trying a riskier and more tedious shot at prolonging their life.

Q. And that brings us to the emotional component of your diagnosis that there are significant emotional problems which come to bear on Mr. Wilkins when he starts to make the important type decisions like you'd have to make in a trial, is that a fair statement?

A. Yes. Specifically in Mr. Wilkins' case his history is just replete with examples of how he is really unable to tolerate any kind of pain, frustration, depression, discouragement.

When placed in these situations he does what we call in psychiatry, acts out his conflicts through events that bring some kind of excitement, some kind of relief in the boredom, extensive drug use, checking out of the situation. Fantasy has been used in describing his past

records where he will simply have a vivid imagination and imagine himself in different roles as a method of coping with some fear.

He even, his name or identity, Pyzon, he described as sort of a alter ego or alternate role for himself where he doesn't have to deal with fear or being vulnerable, but can instead be sort of a macho person who takes charge and whom others fear and respect.

Q. That brings me to my other question for you; Mr. Chancellor was questioning about Mr. Wilkins' competency at the time of the offense.

I believe you described what you were just mentioning, the kind of alter ego situation coming into the decision as to whether he was, in fact, competent at the time of the offense.

Could you kinda expand on that for the Judge a little bit, basically the idea that it was, I think as you described it, and I'm just paraphrasing, he was the alter ego as opposed to himself in a way at the time of the incident.

A. Well, both are really part of himself, but it's almost as a, in order to avoid the situation of stage fright an actor takes on a role that they portray on stage and actually become that role.

He described at the time of the act that he acted in sort of a machine like, automatic fashion. In that regard it further increased the emotional distance from the victim of the crime and became a rather clinical, cold killing of a

person because that's what he had planned to do and that's a role he was acting in at the time.

MR. DUCHARDT: Nothing further, your Honor. Thank you, sir.

MR. CHANCELLOR: Just one question, your Honor.

RECROSS-EXAMINATION BY MR. CHANCELLOR:

Q. It would seem to me, of course I'm not as schooled in this, but any decision any criminal defendant might make or any cancer patient might make, would emotion have some part in that whatever they would do?

A. Surely.

Q. Sure. I mean, no one is going to sit and just make a cold, rational choice without some feeling about it?

A. Some people, I guess, are successful in suppressing their feelings, but it is pretty much a cognitive decision. But, in the average individual there's going to be some emotional interplay.

Q. So, what you're saying is he fully understands what's going on, he understands the consequences of what he wants?

A. In part.

Q. In part. And there's some emotion in him that is playing in there, is that----

A. He wants a real quick solution to this. He doesn't really want to suffer through a long trial or a long incarceration. he wants a quick out. And that is in character of this man.

MR. CHANCELLOR: Okay, no further questions.

FURTHER REDIRECT EXAMINATION BY MR. DUCHARDT:

Q. Just taking that the next step, doctor, this man is not normally developed emotionally, is that a fair statement, from all of the information that you have available to you and from your examination, the type of emotional component that most of us would have in our decision making process that Mr. Chancellor described, this man doesn't have it, is that a fair statement?

A. He has a pretty pervasive developmental defect along the way, particularly stemming out of the kind of home environment and other past experiences that he's had. He really hasn't learned to use his mind in the way an average person would to help him deal with conflicts and help him overcome those.

His style of coping is a rather impulsive trying to get rid of things or change his environment in some way to relieve the distress.

MR. DUCHARDT: Nothing further. Thank you, sir.

MR. CHANCELLOR: No further questions.

THE COURT: You may step down, call your next.

MR. DUCHARDT: These are all of the witnesses available, Judge. Those are the two doctors who have received requests to evaluate Mr. Wilkins.

The Court has their detailed findings in the reports which have been submitted to the Court. I would just note for the Court that in light of Doctor Logan's report and certain details in Doctor Mandracchia's report which would be consistent with Doctor Logan's findings, I think there's some question about Mr. Wilkins' competency to proceed.

Mr. Wilkins, I would note for the record, wishes to be found competent to proceed and I think has made that intention clear to the Court.

Which, of course, as Doctor Logan accurately mentions in his report, has placed Mr. Wilkins and I in a, in really a conflicting type of position.

But, since I have been appointed to represent Mr. Wilkins, these things which Mr. Wilkins may or may not wish me to emphasize I think need be emphasized. I think there's some considerable question as to whether or not this man is competent to make the kinds of choices particularly that come to bear in a capital case as is before the Court.

THE COURT: Anything from the State?

MR. CHANCELLOR: Yes, your Honor. Based on the two doctors you've just heard, in both their reports

I think it's fairly obvious that he is competent to proceed at this time with whatever he'd like to.

THE COURT: I've made this entry so far, "Comes now State by assistant prosecuting attorney and defendant in person and by attorney, Fred Duchardt.

Cause taken up and evidence heard regarding defendant's competency to proceed. The Court finds defendant competent to proceed."

Anything further?

MR. CHANCELLOR: No. your honor.

THE COURT: I'll make that same entry in all three cases.

DEFENDANT'S PRO SE MOTION

MR. DUCHARDT: With regard to others matters, your Honor, Mr. Wilkins wishes for me to withdraw as counsel for him and wishes to proceed pro se.

DEFENDANT: That is correct.

MR. DUCHARDT: Judge, I've informed Mr. Wilkins, as has become obvious in the reporting to the Court, Mr. Wilkins does wish to and fully intends to seek a plea of guilty before the Court to a maximum sentence.

And the situation that I've described to him is one that we are not in a position to be able to assist him in that regard.

And his desire is to not have us do anything which a normal lawyer like position would take in attempting to provide the best possible defense for him.

So, he informed me a couple of months ago that what he wished us to do is to take the position we are now, which is asking the court for leave to withdraw and he wishes to proceed in his own behalf.

I believe he wishes to execute the standard waiver of counsel and proceed pro se.

THE COURT: If I've got this correctly, "Defendant states he no longer wants the public defender office to represent him and that he wants to proceed pro se," that is without an attorney.

DEFENDANT: Yes.

THE COURT: Everyone has a right to represent themselves. Do you understand the constitution also gives you a right to have an attorney?

DEFENDANT: Yes, I do.

THE COURT: And the Court has supplied that for you by appointing the public defender office in this case.

DEFENDANT: That is correct.

THE COURT: And there are many, of course, you are not skilled in the law. And what is your age?

DEFENDANT: Seventeen, your Honor.

THE COURT: And the extent of your education?

DEFENDANT: Ninth grade, your Honor.

THE COURT: So, you are really not familiar at all with legal proceedings, are you?

DEFENDANT: That is correct.

THE COURT: During the course of making decisions you would not have the background of legal knowledge or experience that a lawyer would possess, isn't that correct?

DEFENDANT: Yes, your Honor. I'm not, I don't, okay, that is correct.

THE COURT: All right.

MR. DUCHARDT: Judge, I might just note for the record; my understanding of what Mr. Wilkins wants to do, though, doesn't require, I don't believe in my humble opinion-----

DEFENDANT: That's right.

MR. DUCHARDT: ---What the, what a lawyer would be able to provide for him. A lawyer normally is there to make certain that the system doesn't, for lack of a better term, bulldoze over a person. And I think using that same analogy, that's exactly what Mr. Wilkins wants to happen.

And I'm, and that's basically what my discussions with Mr. Wilkins have been is concerning the things that a lawyer could help him do. And to the extent that he

wishes to do what he proposes to do, a lawyer in a lot of ways is just going to get in his way.

THE COURT: Well, I think I understand what Mr. Wilkins is asking. But, on the other hand, there might be some things that come up from time to time that, where a lawyer could provide some information and expertise so that he might better make a decision, you see.

And that was what I was getting at in part, that if he, you know, the course he wishes to pursue, I suppose as long as this Court finds that he is competent and able to conduct himself in a competent manner then he will, I guess, be permitted to pursue that avenue that he chooses.

But, on the other hand, at his age and with his lack of legal training and schooling and considering the seriousness of the offense, this Court feels that the availability of legal counsel is essential so that he can rely upon it, at least if he wants to, you see?

MR. DUCHARDT: Judge, the difficulty that I envision, I don't think that that is what he wants, but----

THE COURT: Oh, no.

MR. DUCHARDT: ----He can certainly speak for himself in that regard. The difficulty that I envision is that, is that to the extent that counsel is going to be involved in this case, that counsel, I think by the rules of ethics and the canons of ethics, the rules that go along with those, the ethical responsibility that counsel would have would get in the way of effectively utilizing the system due to what Mr. Wilkins wishes to do.

I can think of a lot of things I'd recommend for Mr. Wilkins to do that, to make it easier for him to get the death penalty, none of those would be anything that would have to do with anything that would be considered good, solid legal thinking. Actually it would all be just the opposite.

It would be recommending to him to do things which I've seen, unfortunately, in my years as an attorney which have had normally the opposite effect of the one that most people would want.

And I don't feel that my oath that I took as an attorney allows me to do that or, in fact, allows any attorney to do that.

And that's the difficulty I would see coming up for anyone to represent Mr. Wilkins after a fashion which he would desire.

DEFENDANT: Excuse me, your Honor, what I was wondering, for the route I want to take what purpose would an attorney serve, I mean for my benefit.

I can understand the purpose of the prosecutor, sir, but not --.

THE COURT: Well, I'm not sure that I'm in a position to explain that to you.

MR. DUCHARDT: I just might for the record tell the Court so that it is part of the record, Mr. Wilkins and I have talked about that---

DEFENDANT: Yes.

MR. DUCHARDT: ----particular thing.

DEFENDANT: How could it serve going the route that I'm going at the moment?

MR. DUCHARDT: And, basically what I told you is I don't see how I could help you and could only hurt you, at least to the end that you're wishing to proceed.

DEFENDANT: That is correct.

MR. DUCHARDT: And I just want to make clear for the record, that's what I advised Mr. Wilkins. And that's certainly a fair statement of the way that I put it to him, that, and, again, I can think of a lot of situations where a lawyer would help a person and where legal guidance is absolutely necessary to the extent that the person is fighting the State in attempting to impose a maximum penalty.

But, to the extent that the State wishes to pursue the maximum penalty and to the extent that the defendant wishes to agree with that, I think the attorney honestly becomes a liability as opposed to any help.

And I can't, I can't envision a situation other than to help the, help the defendant appear to be all of those things which a fact finder would consider to be the type of person who should receive the maximum sentence, which, again, is working to the antithesis of what a lawyer is supposed to be.

DEFENDANT: For defense, yes.

MR. DUCHARDT: A defendant lawyer, yes, you're right.

DEFENDANT: Yes.

THE COURT: Getting back to what I was saying before, you do understand, Mr. Wilkins, that you have a right to hire your own attorney?

DEFENDANT: Yes, your Honor, I do.

THE COURT: And that would be an attorney of your own choice and selection.

And, again, since you have been unable to employ one the Court has appointed one for you. I presume that you are still in a position not to employ your own attorney, is that correct?

DEFENDANT: That is correct.

THE COURT: But, you do understand that an attorney, of course you also understand that you're entitled to have a trial by jury in this case?

DEFENDANT: Yes, your Honor.

THE COURT: And we were about at this time to set your matter down for trial by jury in this Court. Do you understand that?

DEFENDANT: Excuse me, I'm sorry?

THE COURT: I was about to set your matter down for trial by jury with this Court.

DEFENDANT: You were or you are?

THE COURT: I said I was about to before we got into this discussion.

DEFENDANT: Okay.

THE COURT: Now, you understand that if you have a trial by jury that you'd be entitled to a lot of rights, among those would be that you would have the right to counsel to assist and aid you throughout the entire proceeding.

You'd be presumed innocent throughout the entire proceedings. The burden of proving your guilt beyond a reasonable doubt would rest with the State.

You'd have the right to confront and cross-examine all witnesses that appear against you and to call witnesses in your own behalf by compulsory process. And when I say compulsory process I mean by subpoena. You could make people come in and testify whether they wanted to or not.

You'd have the right to remain silent. You wouldn't have to incriminate yourself. And you always have, always have the right of appeal.

Now, do you understand all of those rights in the event you would have a trial by jury?

DEFENDANT: I do, your Honor.

THE COURT: And, of course, everyone has a right to have that. But, you also have the right to waive that if you wish. And you also have the right to enter a plea of guilty as your attorney has probably indicated to you.

But, you do understand that before you start making these decisions the Court feels that it would be in your best interests to have with you at all times the availability of legal counsel who is more skilled and more knowledgeable in the situation than you are, and I'm talking about your pretrial matters regardless of your decision that you finally decide that you must make.

You may not know, there are several things that you may not know how to do, the things that you want to do to get them done as expeditiously and as quickly as you desire, you see?

DEFENDANT: That's a possibility, your Honor.

THE COURT: You see, it might be that if you had the availability of a lawyer to discuss, that is to discuss these problems with him in connection with the law governing the matter, that you might make a different decision than you otherwise would.

DEFENDANT: If I would be able to get a lawyer that would help me proceed along the lines that I want to proceed, I'd be more than happy to have a lawyer that would help me gain the goal I'd like to reach.

THE COURT: Well---

MR. DUCHARDT: Heath, you should probably put it in simple terms what you want the lawyer to do because---

DEFENDANT: Well, if the lawyer could help me get the death penalty, you know, if he's got, I don't know if it's ethical, but moral standards that would keep him from working to his best ability to do that, you

know, or whatever else, or ever other word that he's telling me when he's giving me advice he reminds me that he thinks it's wrong. And that's not what I'm asking for.

MR. DUCHARDT: And that's basically what I'm doing, right?

DEFENDANT: Yes.

THE COURT: Well, you understand any lawyer would be honor bound and ethically bound to give you the advice that he thinks is in your best interest.

DEFENDANT: That is correct.

THE COURT: But, at least you do understand that there's a possibility that you might, there's always the possibility that you could enjoy some success in the trial in your case. You might win your case, you might go free, do you understand that?

DEFENDANT: Yes, I understand that.

THE COURT: And, of course, you certainly would have a better chance to, of having that accomplished with the lawyer than without one, do you understand that?

DEFENDANT: Yes.

THE COURT: Because you certainly don't have, you wouldn't know how to conduct your own defense. You wouldn't know how to conduct the voir dire examination of the jury. You wouldn't know how to

examine witnesses. You probably wouldn't even know how to select the jurors as well as a lawyer would.

You wouldn't certainly know how to make objections and do all of these other things to protect the record. In the event you were found guilty you probably would not know the necessary process to take for appeal or the proper motions to file, the different actions to proceed.

And, of course, on appeal you wouldn't again have the experience and expertise to properly present that to a court of appeals or to the supreme court or any other court for that matter, isn't that all true?

DEFENDANT: To an extent, yes.

MR. DUCHARDT: Heath----

THE COURT: Have you taken all of these considerations----

DEFENDANT: Yes, your Honor, I have.

THE COURT: You've considered all of those things in making----

DEFENDANT: Yes.

THE COURT: ---the decision that you have made?

DEFENDANT: Uh huh.

MR. DUCHARDT: May I interject one thing, your Honor?

THE COURT: Yes, sir.

MR. DUCHARDT: Heath, have I explained to you basically the types of things that I would do if I were your attorney in attempting to try this case to attempt to reach the type of result that Judge McFarland was talking about earlier, in other words trying the case in an attempt to win it, for lack of a better term. Did I explain all of that to you?

DEFENDANT: Yes.

MR. DUCHARDT: And is it a fair statement that you said that's just not what you want a lawyer to do for you?

DEFENDANT: Yes, that's unacceptable, yes.

THE COURT: How long have you thought about this decision to discharge Mr. Duchardt as your attorney and to conduct your own defense?

DEFENDANT: Since----

MR. DUCHARDT: January.

DEFENDANT: ----January. And the last, my original court hearing when my evaluation from Tri-County when I came in here, I was ----

MR. DUCHARDT: Western Missouri.

DEFENDANT: ----Yes, Western Missouri, I mean.

THE COURT: I must be rather candid with you, you understand that if you, if you do, as I understand what you've indicated here that you want to do, you might very well enter a plea of guilty and ask for the death penalty.

Now, do you understand fully that if you do that, that decision then would be up to the Court as to whether or not you'd receive the death penalty or not?

DEFENDANT: Yes.

THE COURT: And the Court is the judge, do you understand that?

DEFENDANT: Yes.

THE COURT: And you understand further that the Court would not have to accept your recommendation as to the penalty?

DEFEDANT: Yes, you wouldn't have to.

THE COURT: Do you understand that?

DEFENDANT: Uh huh.

THE COURT: And you understand that you might better, you might very well have a better chance of receiving whatever you want to receive in front of a jury. Have you ever thought about that?

DEFENDANT: Yes. Yeah, but, I've touched that but I came at it a different way.

THE COURT: Well, I just want, you have considered all of that?

DEFENDANT: That is correct, your Honor.

THE COURT: Mr. Duchardt, have you talked with Mr. Wilkins at length about this situation?

DEFENDANT: Yes, sir.

MR. DUCHARDT: How many times would you say, Heath, that you and I have talked about this, three or four times anyway over at the jail.

And a couple of those conversations were at least two hours long, I think.

Judge, I've tried to describe for Mr. Wilkins all of the different possibilities and all of the options that ----

DEFENDANT: Yes, sir, quite explicit.

MR. DUCHARDT: ----are, his words are well taken, quite explicit. And I've attempted to go through every potential option that I can see in our ability to defend this case and attempt to present a valid defense on his behalf.

And also I've attempted to describe for him the scenario should he wish to go ahead and proceed as he is. And that's what got us to our specific conversations about the fact that, at least in my opinion, a lawyer would be duty bound to do things just the opposite of what Mr. Wilkins would wish be done should he continue on this path of trying to seek the maximum punishment for himself.

DEFENDANT: Yeah, I'd like to make your Honor aware that this isn't, you know just a spur of the moment idea or anything along that line.

I've, the Court would've been aware at a more earlier date but my attorney proceeded without my former knowledge in my, along my case and without consulting with me.

MR. DUCHARDT: The, along the lines of what Heath is talking about, Judge, when we originally undertook Mr. Wilkins' representation I presumed as an advocate that all necessary things should be done to properly prepare this matter for an eventual trial on the merits of the case.

And I, without receiving specific instructions from him to do so, filed an application for mental examination and also filed an application for change of venue, the first of which we've completed today and the other one still has not been heard because we had to determine competency.

I did not seek Mr. Wilkins' counsel about those and he informed me a couple of months after I had gotten the procedure in process basically what he's telling the Court today, that despite my understanding to the contrary, actually assumptions in some way to the contrary, that he wished to do what he's in the process of doing right now.

DEFENDANT: And I, you know, I do understand that these tests that were taken were quite necessary. But, the fact remains that I would've proceeded without any knowledge at all.

THE COURT: Well, you understand, Mr. Wilkins, that we're talking about serious matters here. We're talking about matters that have some finality to them. And the proceedings proceed to a point where at some point you can't, you can no longer change your mind, you see?

DEFENDANT: Yes, your Honor, I understand.

THE COURT: And you are a young man. You have a lot of years ahead of you. And I will not at this time accept your request that you represent yourself.

I don't think I will anyway. I want you to think about it at least another few days, maybe a week at least, even though you say you've been thinking about it since January, is that correct?

DEFENDANT: I can accept that.

MR. HARMAN: Your Honor, the State's position would be consistent with the court's, that an attorney could provide counsel, advice, and assistance in some form to this defendant if necessary.

MR. DUCHARDT: I've heard that twice and I really, with all due respect to Mr. Harman and to the Court, I'd really like to know what in light of what Mr. Wilkins wishes to do.

I have thought about this for the last three months. And I am totally at a loss to understand how a lawyer acting within the bounds of propriety, conscience, and particularly the rule, canons and rules of ethics, could do anything to help this man get the death penalty.

I'm really at a loss to know what it is that a lawyer can do in good conscience.

THE COURT: And I would not direct you to assist him to get he death penalty.

MR. HARMAN: And it is not the State's desire, Mr. Duchardt.

THE COURT: But, I might very well, and I will say this, if I sustain his application to represent himself I will still order that the public defender office be appointed for him.

And the public defender office will be directed to remain available for consultation with him throughout the entire proceeding.

DEFENDANT: That is if I would request it.

THE COURT: Whether you request it or not.

DEFENDANT: Okay.

MR. DUCHARDT: My only, of course, I'll follow any order as to my presence in the courtroom. I, again, am at a loss to know how I can advise a person to, to help with a particular matter. But, I guess we can take that up on a case by case basis on the questions that were posed to me by Mr. Wilkins.

The only problem that we would confront there would be problems of privilege. And, but, the difficulty that I envision with that type of scenario is that the types of questions that would come up, I would think,

would be questions along the lines of how he could, how Mr. Wilkins could best achieve his goal.

And I don't think I'm ethically in a position, and certainly morally I'm not in a position to be able to assist him with that.

MR. HARMAN: Your Honor, it's not the State's position to ask Mr. Duchardt or his office or any attorney to do anything unethical or immoral.

We simply believe with the Court that there may be some matters where assistance or advice or counsel may be necessary.

And, again, Mr. Wilkins may have questions unrelated to the ultimate question which Mr. Duchardt presents to the Court.

And for that reason the State believes counsel should be made available to this defendant at any time during these proceedings.

That's really all we want to make clear to the Court.

THE COURT: Well, and I hope that I made clear that in the event I accept the defendant's application to represent himself, and with his constitutional right to do so it may be that I will have to accept that, even though I don't like to do it.

If I do that I will appoint or ask or order that the public defender office remain available for consultation throughout the proceedings, whatever they might be, in this Court.

MR. HARMAN: And I would note that has been done in the past, your Honor.

THE COURT: It has been done in the past.

MR. HARMAN: In State versus Rollie, I believe, a similar situation.

THE COURT: Right, Henry Rollie, that's correct.

MR. DUCHARDT: Judge, the difference in Mr. Rollie's situation was that Mr. Rollie was attempting to be found not guilty, which I think is a very significant difference to this one.

Again, the problem that I have, despite the fact that everybody feels, and I respect the tremendous amount of wisdom in the Court and also in the prosecutor's office, but I literally have racked my brain and have tried to figure out what I could do, what type of advice that Mr. Wilkins would be seeking that would not be related to his ultimate goal.

I think the problem that you have is that all decisions on strategy and everything else in a trial, all are based in some measure toward the ultimate goal of the, of the trier.

And to the extent that Mr. Wilkins' ultimate goal is to receive the maximum punishment and be found guilty, any help that I, any steps that I would take to assist him in that regard I just don't think are proper for me to take.

But, again, I'll respect any order that the Court gives me. And to the extent that I'm placed in that position I'll put it on the record.

I guess that's the best that I can do under the circumstances. And I'm, as I said, I'll follow any order the Court gives me.

THE COURT: Well, you really probably shouldn't presume that everything he has done in the past will be continued in the future with consistency. If may very well be, but you shouldn't-----

MR. DUCHARDT: And I don't----

THE COURT: -----I don't think you can presume that. And I don't think we should really argue out that particular problem here today because regardless of your feelings the Court will do as I've just said. And you'll have to do your job as best as you can and with your ethical feelings and moral feelings about the matter have to do, as I know you will the good lawyer that you are, and accept the responsibility that will be placed upon you by this Court.

I understand that it's not one that you favor. But, still, I want you to know, that is what, and I'm telling the defendant, that is what will happen.

Do you understand that?

DEFENDANT: Yes, I do.

THE COURT: Do you have any questions about it?

DEFENDANT: No, your Honor.

MR. DUCHARDT: Judge, I would just, as an additional thing, note for the Court that Mr. Wilkins has ordered me not to proceed any further with an investigation of the facts of the case, Am I saying it right?

DEFENDANT: That's correct, or proceed on a one-on-one basis. I request that you do not.

MR. DUCHARDT: You need to explain to them. I think I understand what you mean. What do you mean by one-on-one basis?

DEFENDANT: That if I understand the Judge's order for you to be available in case there are questions that arise that I would have so that you could answer them.

And what I was ordering you, as stated, that I did not want any further investigation on my background or any further investigation on, I should say any further investigation that could at all make this case proceed in the direction that I do not want it to go.

MR. DUCHARDT: In other words you did, I think you said specifically you don't want me to go out and interview witnesses?

DEFENDANT: No way.

MR. DUCHARDT: You don't want me to do any of the things like I described I was going to do?

DEFENDANT: No.

MR. DUCHARDT: Normal investigation of the case, normal filing of motions. I think you indicated to me that you wanted me to withdraw the motion that I filed for change of venue.

Again, I just wanted to make sure that everybody knew that despite the fact that I guess I'm going to be the lawyer in name, Mr. Wilkins has ordered me not to do anything.

THE COURT: But, your lawyer has indicated to you that you do have a right to ask for change of venue, and you know that?

DEFENDANT: That is correct.

THE COURT: Or you could ask, you have a right to ask for change of judge if you want to do that, and you understand that?

DEFENDANT: That is correct.

MR. DUCHARDT: I think he's, we're not timely on that, Judge.

THE COURT: Well, you have a right to ask for it, at any rate.

MR. DUCHARDT: I don't think it's his intention to do it, but --.

THE COURT: Well, I think that I will reset this matter for another date and at that time make the determination as to whether or not the Court will allow this defendant to represent himself with the proviso that I made, with the proviso that I just mentioned, that is

that you would remain available for consultation throughout the entire proceedings.

MR. DUCHARDT: Judge, I guess I just have one question of the Court; my normal procedure, as the Court, I think, is familiar enough with me to know, is to make sure that I've talked to every witness and know completely what all of the witnesses are going to say and do before ever coming to trial.

However, as the Court sees, I'm not in a position to do that if I am going to follow the instructions of my client.

I would just ask the Court if the Court is ordering me to do what I would normally do or to follow the advice of my client or if I should make that decision myself?

THE COURT: Mr. Duchardt, at this point you have not been relieved of your responsibilities as his lawyer, period.

MR. DUCHARDT: All right, sir.

THE COURT: Beyond that I can't say any more.

Now, I'm going to set this for next Wednesday, April 23rd, at 11 o'clock in the morning for the determination of this issue.

MR. DUCHARDT: Judge, then in light of the Court's statement in that regard I need to tell Mr. Wilkins that I'm going to go ahead and proceed with the investigation concerning the case since I think that's my ethical duty to do that.

THE COURT: That's up to you.

On April 23rd at 11 o'clock we'll address this issue again. And at that time the Court will make an entry.

DEFENDANT: Would, since you're going to proceed with the investigation, I'd like to ask you if you could, I'd appreciate it if you would make me aware before you proceed exactly what you're doing, you know.

MR. DUCHARDT: I'll be talking to all of the witnesses that the State has endorsed.

DEFENDANT: Okay.

THE COURT: "Cause continued to April 23rd, 1986, at 11 o'clock a.m."

* * * * * * * * * * *

These proceedings came on before the Honorable Glennon E. McFarland, Judge of Division One of the Seventh Judicial Circuit of Missouri, at Liberty, on Tuesday, the 23rd day of April, 1986.

The defendant appeared in person throughout these entire proceedings.

The appearances were as hereinbefore set forth.

The following proceedings were had:

THE COURT: All right, the next matter I see on the docket is State versus Wilkins, CR185-490, 491,

and 492, State versus Heath Wilkins also known as Pyzon. Come up, please.

Are you Heath Wilkins?

DEFENDANT: Yes.

THE COURT: Mr. Wilkins, my record shows on April 16th you appeared before this court. At that time the Court found you competent to proceed.

And the Court was informed at that time that you no longer wanted the public defender office to represent you and that you wanted to proceed pro se.

DEFENDANT: Yes, sir, that's correct.

THE COURT: And at that time I explained to you certain reasons why I thought it would be in your best interest that you have the public defender remain on as your attorney.

DEFENDANT: (Nods his head.)

THE COURT: And how it would benefit you to have them and how you might be aggrieved by not having them.

And among those was the fact, as I understand it, that you are seventeen years of age, is that correct?

DEFENDANT: That is correct, your Honor.

THE COURT: And that you have no legal training or experience?

DEFENDANT: That's correct, your Honor.

THE COURT: You're charged with murder in the first degree, you do understand that?

DEFENDANT: Yes, your Honor.

THE COURT: And you understand the range of punishment for that is a possible death penalty?

DEFENDANT: Yes, your Honor.

THE COURT: Or life imprisonment with no probation or parole or release except by act of the governor?

DEFENDANT: I'm quite aware of that, your Honor.

THE COURT: And you understand that. And, of course, you understand that if you were dissatisfied with the particular attorney who represented you that you'd have the right to hire your own attorney?

DEFENDANT: Yes.

THE COURT: And you have been found indigent and the public defender office has been appointed for you in this case.

DEFENDANT: (Nod his head.)

THE COURT: I want you to know that Mr. Duchardt has demonstrated that he is a competent and skilled criminal defense lawyer. And he is willing to aid

and assist you throughout these proceedings. You do understand that?

DEFENDANT: Yes, your Honor.

THE COURT: Do you further understand that this will be bifurcated type of a proceeding, that is it will be separated so that the first segment is the finding of guilt or innocence. And if you are found to be guilty then the second stage becomes the state where the determination of punishment if made. Do you understand that?

DEFENDANT: Yes, your Honor.

THE COURT: And you are entitled to have an attorney at both of those stages, you do understand that?

DEFENDANT: Yes.

THE COURT: And if you decided that you didn't want one at one stage and wanted it at the other, you could also have that, do you understand that?

DEFENDANT: Yes, your Honor.

THE COURT: Were these things previously indicated to you either by Mr. Duchardt or by anyone else, these things that I've been telling you?

DEFENDANT: Partly, your Honor.

THE COURT: And, of course, the attorney could aid and assist you, as I mentioned at the last court proceeding, throughout the entire proceeding; that is in

the preparation and investigation of your case, the advising you of your rights, the examination of the prosecuting attorney's file, the various means of obtaining discovery and information about the case.

DEFENDANT: Yes, he did, your Honor, if that was necessary.

THE COURT: And legal research. And they could help you, of course, in the conduct of your trial and at all other pretrial proceedings.

And in regard to the conduct of the trial if you had one, of course, they could obviously do a better job than you in conducting the voir dire examination of the jury panel, in selecting the jury, in making opening statement, in examining and cross-examining all witnesses, in making objections and preserving the record for appeal, making all proper motions, in the preparation for instructions that are submitted to the Court for submission to the jury, all arguments to the jury and to the Court.

And in the event you are found guilty they would assist you in your right of appeal. And the first step of that would be, probably, a motion for new trial.

Now, you don't have any legal experience. You don't have any legal training. And the Court encourages you to change your mind and to accept the representation, that is the continued representation of the public defender office. And you do understand all of that?

DEFENDANT: I understand, your Honor.

THE COURT: And, as I understand from what you told me the last time you were here, that you had talked about this with the public defender for some time, I thought you said clear back as far as January of 1986?

DEFENDANT: That is correct.

THE COURT: And you have been contemplating this move of asking to proceed pro se from that time until today, is that correct?

DEFENDANT: Yes, your Honor, that's when I made the decision to proceed pro se and I still stand by it.

THE COURT: When did you make your decision to proceed pro se?

DEFENDANT: I don't know the exact date, but----

MR. DUCHARDT: February, wasn't it?

DEFENDANT: I think somewhere around February. After the court at the end of January is when I come up with the decision to proceed pro se.

THE COURT: And you have had an opportunity, then, to discuss this fully with Mr. Duchardt or other members of his staff?

DEFENDANT: Oh, yes.

MR. DUCHARDT: Mr. Wilkins, I'm sorry, I didn't mean to interrupt.

THE COURT: Have you had an opportunity to discuss that same decision with everyone else that you might want to talk to about it?

DEFENDANT: There's nobody else, nobody else who has any hand in my decision, your Honor.

THE COURT: Do you have any questions that you want to submit to the Court about the situation?

DEFENDANT: Well, you know, before you make your decision I was, you know, I was declared competent to proceed. And with my decision, it is a competent decision.

THE COURT: That's correct.

DEFENDANT: And I'd just like that to be clear.

THE COURT: Yes, that is true.

DEFENDANT: And that's all.

THE COURT: Now, knowing all of the things that I have just mentioned to you and what I mentioned to you the last time you were before this Court, what is your desire now?

DEFENDANT: To proceed pro se, your Honor.

THE COURT: You want the public defender office to be, well, to not further represent you in this case?

DEFENDANT: That is correct.

THE COURT: Well now, you, I want to tell you something, have you looked over the form, by the way, that was given to you, the written form that you would have to sign in the event you decided to represent yourself? Did I give you a copy of a form?

DEFENDANT: I don't believe you did, your Honor.

THE COURT: I thought I did.

MR. DUCHARDT: I don't believe so.

THE COURT: Well, at some stage you would have to sign a written waiver of counsel. And among the things that would be covered in that written waiver would be the fact that you're charged with the offense of murder in thef first degree and that you have a right to a trial on that charge.

And, further, that you have a right to trial by jury. And that the maximum possible sentence on the charge is death. And that the other possibility of, that the other possibility of, that the other possibility for punishment would be life imprisonment with no probation or parole or release except by act of the governor.

The form would also recite that you are aware that any recommendations by a prosecuting attorney or other prosecuting official are not binding on the Court or on the judge and that any such recommendations may or may not be accepted by the judge.

The form would also tell you that if you plead guilty or if you are found guilty of the charge that the judge is most likely to impose a sentence of death.

Now, the statute also prescribes a sentence of confinement, but the statute does not contemplate a situation like this where a person faces the death penalty.

And, therefore, you must know that that would be in the form as well.

DEFENDANT: (Nods his head.)

THE COURT: Also that if you're indigent and unable to employ an attorney that you have a right to request the judge to appoint counsel to assist you in your defense against the charge.

Now then, you must further know that if you are permitted to file a waiver and you do waive your right to have an attorney and if the Court permits that and a plea of guilty or a finding of guilty on the charge is entered, before the imposition of sentence of confinement the judge shall determine, first of all, that if a plea of guilty has been entered that there is a factual basis for the plea and that you, in fact, are guilty of the charge.

Also I would also be required to inquire into whether or not you know of the existence of any witness or of any facts, circumstance, or evidence which was not presented to the Court which would exonerate your of the charge.

DEFENDANT: I can accept that.

THE COURT: And I'm also required to inquire of the prosecuting attorney as to whether or not there are

any witnesses or evidence which would cast a reasonable doubt about your guilt or defenses available to you not disclosed to the Court.

Do you understand all of those things?

DEFENDANT: Yes, I do, your Honor.

THE COURT: And, again, you understand that this Court strongly encourages you to retain counsel and have counsel throughout the entire proceedings:

DEFENDANT: Yes.

THE COURT: Now then, with all of that are you saying, what do you wish to do, again?

DEFENDANT: To proceed pro se, your Honor.

THE COURT: Anything further?

MR. DUCHARDT: Your Honor, may I just for a moment --

THE COURT: You may.

MR. DUCHARDT: Mr. Wilkins, I think we've covered this before for the record, but just let me make sure that the record is clear; you and I have talked on numerous occasions about your desires to plead guilty and seek the death penalty, is that correct, sir?

DEFENDANT: That is correct.

MR. DUCHARDT: And that is your desire, is that correct, sir?

DEFENDANT: That is correct.

MR. DUCHARDT: And then I informed you, is this a fair statement, that in my position as legal counsel that I did not feel that I could offer you any assistance in doing that, that most of what the judge has described to you this morning are the types of things that a lawyer would do were that lawyer trying to obtain for you a lesser charge, a lesser sentence, or---

DEFENDANT: Yes.

MR. DUCHARDT: --- an acquittal?

DEFENDANT: Yes, I remember those from the last hearing.

MR. DUCHARDT: And those are the things that I have indicated to you that I'm ready, willing, and able to do for you, is that a fair statement?

DEFENDANT: It is.

MR. DUCHARDT: And where our problem has come is that you don't want me doing that stuff for you, is that a fair statement also?

DEFENDANT: That is a correct statement.

MR. DUCHARDT: Okay. And are you indicating to the Judge that you do not wish my office to be appointed for you or allowed to remain as legal counsel for you for legal representation?

DEFENDANT: That is what I have stated, yes.

THE COURT: Anything from the State?

MR. CHANCELLOR: No, your Honor.

MR. DUCHARDT: I would again renew my motion to withdraw, your Honor, because pursuant to the public defender statute since Mr. Wilkins has indicated that he does not wish legal representation from my office he is no longer a person who qualifies for public defender services.

And I don't think the statue allows me to continue representation of him. And, certainly, I can't think of anything, as I've noted to the Court, considering Mr. Wilkins' desires. I personally don't feel that he's competent to make those decisions. But, of course, the Court has made its decision on the basis of information which has already been presented.

But, in any event, I cannot and will not assist him in the path that he's chosen.

THE COURT: I've made this entry, but, before I do that I want you to know that the entry that I'm about to make, of course, is contingent upon you executing a valid waiver, a proper waiver of counsel. This has not been filled in as yet (indicates).

And the one that I see here is not yet in complete conformity with the statutes. I'll have to have this one redone.

So, I think I will withhold making my entry until the waiver has been properly filled in and executed by you. And that will take some time. And I anticipate that

we will not be able to get to that until about 1:30 this afternoon, at least, maybe 1:45.

So, this matter will be set over until that time. And I'll ask my reporter in the meantime to go back and prepare one that does conform with the statute.

So, that will be all at this time and the matter is continued until, I'll try to make it 1:30, but it may be as late as 1:45 this afternoon.

That'll be all.

* * * * * * * * * * *

The following proceedings came on at 1:36 p.m. on April 23rd, 1986, with all parties present as hereinbefore.

THE COURT: CR185-490, 491, and 492, State versus Heath Wilkins.

Mr. Wilkins, I'm going to hand you a waiver of counsel form that you may look over. And I think you should be provided with a pen.

You may take that back with you to the counsel table and look it over. We will handle another matter while you read that fully and decide what you want to do with it.

* * * * * * * * * * *

The following proceedings came on at 2:28 p.m. on April 23rd, 1986, with all parties present as hereinbefore.

THE COURT: Back to State versus Wilkins, three cases, CR185-490, 491, and 492.

So far all we've been talking about, I guess, what we've been talking about would pertain to all three of those cases, do you understand that?

DEFENDANT: Yes, your Honor.

(Hands item to judge.) I completed that.

THE COURT: And is that your signature (indicates)?

DEFENDANT: It is, your Honor, yes.

THE COURT: Well, you were supposed to have signed that in my presence and I didn't see you sign it. Would you sign above it again, please, if you want to?

(Defendant does so.)

THE COURT: By the way, you didn't fill in the date. And the date is the 23rd (judge hands paper to defendant who fills in date and returns it to judge.)

THE COURT: Mr. Wilkins, before you signed this did you read it through fully?

DEFENDANT: Yes, your Honor, I did.

THE COURT: Did you understand it fully?

DEFENDANT: Yes, your Honor, I did.

THE COURT: Do you have any questions about it at all?

DEFENDANT: No, your Honor.

THE COURT: This needs your signature as well (hands to deputy circuit clerk who signs it and returns it to judge.)

DEFENDANT FILES WAIVER OF COUNSEL

All right, I will show the defendant's waiver of counsel filed with the case. And this pertains to CR185-491FX, that is the Class "A" felony of murder in the first degree charge.

Mr. Prosecutor, will that be the case you will be proceeding with first?

MR. CHANCELLOR: Yes, your Honor.

THE COURT: Well, then we will just take it as to that case at this time then, I suppose.

Mr. Wilkins, did you want your waiver to apply to all three cases?

DEFENDANT: Yes, your Honor, I did, but I was, I notice that you didn't verbally apply it, you did not say it was being two or three cases so I figured that you were going to give me two more.

But, yes, I'd prefer to apply it to all three cases.

THE COURT: All right.

DEFENDANT: But, on the writing it said only the one. So, I figured you were going to give me two more.

THE COURT: Do you have some other blank forms there?

(Deputy circuit clerk hands items to judge.)

THE COURT: CR185-490 is the Class "B" felony of unlawful use of a weapon. The possible range of punishment on that charge is one day to one year in the Clay County Jail or one to five years in the Missouri Division of Corrections and/or a fine not to exceed the sum of $5,000.00.

There is another provision about it being double the amount of the offender's gain but not to exceed the sum of $20,000.00. That has another fine with it, but that wouldn't come into play in this case.

And when I say and/or a fine that means it can be a fine alone or it can be a fine plus incarceration, do you understand all of that?

DEFENDANT: Yes, your Honor.

THE COURT: 492 is the Class "A" felony of armed criminal action.

Mr. Prosecutor, is the range of punishment for that armed criminal action three years to life?

MR. CHANCELLOR: Yes, your Honor.

THE COURT: Not less than three years----

MR. CHANCELLOR: No, your Honor, not less than three years or life imprisonment.

THE COURT: And that's the entire range of punishment?

MR. CHANCELLOR: Yes, sir.

THE COURT: Here are two more forms (hands to defendant.)

DEFENDANT: Your Honor?

THE COURT: Yes.

(Defendant fills out form and signs it in Judge's presence.)

THE COURT: Would you mind dating that right at the bottom?

DEFENDANT: Here? (Indicates)

THE COURT: No, right down here (indicates). Just put the date there.

(Defendant does so.)

(Defendant fills out and signs another form in the Judge's presence.)

THE COURT: Did you read all of these other two forms?

DEFENDANT: Yes, your Honor, I did.

THE COURT: And did you understand everything that you read?

DEFENDANT: Yes, your Honor.

THE COURT: I've made this same entry thus far in all three cases; "Comes now State by assistant prosecuting attorney and defendant in person and by attorney, Fred Duchardt.

Court encourages defendant to proceed with the aid and assistance of counsel. Defendant states he wishes to proceed without a lawyer," is that right?

DEFENDANT: That is correct.

THE COURT: "Public defender office granted leave to withdraw except that Fred Duchardt is ordered to remain available for consultation throughout the proceeding." That's consultation, of course, with the defendant.

The next step, I suppose, would be for, to set the matter for a hearing or for further proceedings, at any rate.

MR. DUCHARDT: Judge, May I just make sure that I know what the Court is asking of me?

THE COURT: Yes, sir.

MR. DUCHARDT: I take it that I am not to act in Mr. Wilkins' behalf since he's asked that I not, but only be available in case he does wish to inquire of some matter concerning the law or something like that.

Am I fairly understanding the Court's order?

THE COURT: I think that's generally correct.

Do you understand it to be that way, Mr. Wilkins?

DEFENDANT: Yes, your Honor.

THE COURT: If you desire any assistance from Mr. Duchardt then you contact him, otherwise he is to remain available throughout these proceedings.

If there is a trial then he will remain with you throughout the trial in case you need any aid or information of any kind. And at any stage in the investigation or preparation if you feel that you need his assistance he is to be available when called for whatever purpose.

Unless you do call, you understand, he will not be volunteering his services?

DEFENDANT: Yes, your Honor, I do.

MR. DUCHARDT: And I just need to make sure that the record reflects, and I've told Mr. Wilkins this before and I think I've made it clear for the record, but, just to make certain; I will not lend him any information which in my opinion might aid him in seeking the death penalty because I don't think that that would be good counsel of law. I'm just not in a position to be able to do that.

THE COURT: Very well.

Do you understand that as well, Mr. Wilkins?

DEFENDANT: Yes, I understand his statement.

THE COURT: Do you have any objections to any of that?

DEFENDANT: No, your Honor.

THE COURT: I suppose the next thing would be to set the matter down for further proceedings at another time.

Mr. Wilkins, what is it that you wish to do now?

DEFENDANT: Well, your Honor, I'm pro se, you know, with my attorney. Without my attorney I'd like to seek to plead guilty to all three charges.

THE COURT: Well, I want you to, first of all, understand that you enter a plea of guilty. You understand that you've been charged with these three offenses, one of which is the offense of murder in the first degree?

DEFENDANT: Yes.

THE COURT: And we've gone through this before, but you do have a right to trial on the charge and you have a right to trial by jury. You do understand that?

DEFENDANT: Yes, your Honor.

THE COURT: And if you have a trial by jury you understand that it would take twelve jurors all together agreeing before they could recommend a verdict finding you guilty.

And also in the punishment stage, that second stage, it would also take twelve jurors agreeing again to assess a penalty, which would either be the death penalty or life imprisonment with no probation, parole, or release except by act of the Governor.

But, whatever it would be it would take all twelve jurors agreeing.

Now, if they couldn't agree, of course, then that might result in a mistrial, you see, or a hung jury we call it.

And then it would have to be done over again if the State wanted to proceed again.

Now, you understand that if you have a trial by jury or, and there's always the chance that the jury could find you not guilty or they could find you guilty or they can not agree, they can get hung up as we call it. Do you understand all of that?

DEFENDANT: Yes, your Honor.

THE COURT: And, of course, if you enter a plea of guilty here to this, to these charges, then you will not get the benefit of having the chance of going free, do you understand that?

DEFENDANT: Yes, your Honor, that is correct.

THE COURT: And if you do decide to enter a plea of guilty and if the Court does accept your plea of guilty to these charges, then thereafter the Court will not permit you to withdraw that plea?

DEFENDANT: That is correct.

THE COURT: However, when we're talking about the first degree murder case, that is a two stage trial, we call is a bifurcated trial.

And even if you persist with your indication that you wish to enter a plea of guilty, it will still be in two stages. The first stage would be for the Court asking the plea and accepting it or not accepting it.

If the Court did accept it then we would go to the second stage.

Now, of course, you have a right to trial by jury in both of these stages, you see. But, even if you decided, even if you decided to plead guilty and the Court accepted your plea, if you changed your mind then and decided that you wanted to have a trial by jury, you could have that, do you understand that? And the Court would provide that for you.

DEFENDANT: Yes, your Honor.

THE COURT: Also if you decided at any time during any of these proceedings that you would desire to have an attorney represent you, you just make that known to the Court and the Court will see that an attorney is appointed or that Mr. Duchardt would then be reappointed, I guess, to act fully as your counsel and not just an advisor, do you understand that?

DEFENDANT: Okay.

THE COURT: I might say that I agree with Mr. Duchardt, I think that it is not a good move on your part to plead guilty and ask for the death penalty.

And I say that because undoubtedly in this type of a proceeding the State will also be asking, I presume, for the death penalty.

And in that kind of a situation the Court will quite likely enter a death penalty punishment in this case. And, you see, this isn't a game we're playing, this a very final situation. And that's why I'm saying all of this to you so that, we're going to set this matter down for a plea if you say you want to do that sometime in the near future.

But, between now and then I want you to think about it because when it gets to the stage that I have accepted your plea of guilty, then the action is then irreversible, you see. You can't change your mind.

And, you know, it might sound like to you that entering a plea of guilty and asking for the death penalty is the thing to do for whatever reason you think. But, on the other hand, you can't change your mind after that. We're not playing games, this a serious thing and receiving the death penalty is not a pleasant experience. That's a terrible experience.

And if you think you're escaping something by asking for the death penalty, you probably are not.

DEFENDANT: I appreciate----

THE COURT: I mean you'll be put there on death row----

DEFENDANT: -----your advice.

THE COURT: -----and you'd have to wait for that, you see. And when the final time comes and if death would be imposed upon you as it is now by statute, it would be by lethal gas.

And they would drop this pill in the acid and then the gas would engulf you and it's a terrible thing. You'd choke and you'd, it would burn your nostrils and burn all the way down. That's a terrible thing. And it wouldn't be an easy death, it would be terrible.

And what I'm saying to you is that you may have some misconceptions that taking the death penalty is the easy way out.

And I strongly suggest to you that you change your mind on this. You've given this a lot of thought. And that you do not ask for the death penalty and that you back all of the way up, that you ask for a lawyer, that you ask for trial by jury and let the due process of law take its course.

Now, do you understand all of that?

DEFENDANT: Yes, your Honor, I understand what you're doing.

THE COURT: Okay. Now, I won't ask you, well, first of all, have you decided what you want to do so far, I mean thus far?

DEFENDANT: Yes, your Honor.

THE COURT: And what is it that you want to do?

DEFENDANT: I want to plead guilty to all three charges.

THE COURT: I would appear that I could take this matter for a guilty plea on Friday, May 9th.

Would you be available at that time, Mr. Duchardt?

MR. DUCHARDT: Yes, sir.

THE COURT: And you, Mr. Prosecutor?

MR. CHANCELLOR: Yes, your Honor.

THE COURT: I have some other matters set at 9 o'clock. I think I will set this for 10:30 in the morning.

Is that agreeable with you, Mr. Wilkins?

DEFENDANT: Yes, your Honor, it is.

THE COURT: You know, I might also suggest to you that you talk to whoever, any family members, friends, or other people that might help you. It might help you to talk to other people about this decision you're having to make, people that care about you and that you have confidence in.

And I want you to use this period of time between today and May 9th to think about this fully. Just because you tell me here today that you want to enter a plea of guilty doesn't mean that you can't change your mind now.

And you can change your mind at any time up to and until the Court accepts your plea.

I've made this further entry; "Cause continued to May 9th, 1986 at 10:30 a.m." I'll make the same entry in all three cases.

* * * * * * * * * * *

The following proceedings were had before the Honorable Glennon E. McFarland, Judge of Division One of the Seventh Judicial Circuit of Missouri, at Liberty, on Tuesday, April 29th, 1986.

The defendant was present in person throughout these entire proceedings.

Mr. Duchardt was present in the courtroom and Mr. Larry Harman represented the State.

THE COURT: CR185-490, 491, and 492, State versus Heath Wilkins.

Mr. Wilkins, I had you brought up today, and I note that Mr. Duchardt is sitting in the courtroom, so I could deliver to you some petitions to enter plea of guilty if you still persist with your request to enter pleas of guilty.

We must have one of these filled out for each case.

I forget, did you tell me that you can or cannot read?

DEFENDANT: I could, your Honor.

THE COURT: You can read?

DEFENDANT: Yes, sir.

THE COURT: All right, I'm giving these to you so that you can have plenty of time to read and study these over. These contain many of the rights that you're entitled to if you have a trial by jury and some of the things that you waive if you do not have a trial by jury.

I'm going to give you three copies of this (hands to defendant.) And you should fill one out for each case in which you intend to enter a plea of guilty.

In addition to that, in regard to case number CR185-491 there is another form. And this pertains only to that one case of murder in the first degree. And it is a written waiver of trial by jury that the Court would also require you to sign in addition to the others if, again, you want to waive trial by jury and enter a plea of guilty. (Hands items to defendant.)

MR. HARMAN: Your Honor, excuse me, does that waiver include any language as to the possible right of trial for both stages of the proceedings?

THE COURT: Yes, it does, that's the reason I prepared it----

MR. HARMAN: All right, sir.

THE COURT: ----that second waiver. It is specifically for that purpose.

MR. HARMAN: Yes.

THE COURT: And you do understand that as to CR185-491FX, that is the murder in the first degree charge, as to that case the trial is a bifurcated, it's a two stage trial.

We refer to the first stage as being the guilt or innocence stage and the second as being the punishment stage.

The guilt state, if you have a trial, of course, by jury it would be that trial. And if not it could be by your plea of guilty. And then the second stage, of course, comes later.

But, in regard to both of those stages you're entitled at both stages, first of all, to have an attorney. And the Court is willing to appoint you an attorney for both of those. I think we've covered that pretty fully already.

DEFENDANT: This just involves the murder in the first degree charge?

THE COURT: Yes, the waiver of trial by jury only pertains to that one. And then the second stage, of course, is your punishment stage. And you're entitled to trial by jury for that even if you've already entered a plea of guilty to the other, you see?

DEFENDANT: What about the other two charges?

THE COURT: Those are not bifurcated trials. They're just one stage.

DEFENDANT: Okay.

THE COURT: When a plea of guilty is entered as to those then the Court orders a presentence investigation and the Court will in all probability order a presentence investigation as to CR185-491, the first degree murder charge as well.

And then the case is set over and we wait until that's done. That usually takes five or six weeks. And then a hearing would be held on the second stage for anything that the prosecutor wants to present or anything that you want to present.

And then after making some determination on that reviewing the presentence report, the Court would then make the final determination in the case, in the cases, in all cases. As a matter of fact we'd probably do all of those at the same time.

DEFENDANT: Okay.

MR. HARMAN: Perhaps his question, Judge, is just whether or not he's going to have a jury trial on the other charges?

DEFENDANT: That is correct.

THE COURT: I beg your pardon?

DEFENDANT: I was wondering if I was going to have a jury trial on the other charges?

THE COURT: You can have it if you want it.

DEFENDANT: I do not, your Honor.

THE COURT: Well,----

MR. HARMAN: I thought that's where he was going.

THE COURT: I'm sorry, I didn't understand that.

Yes, you're entitled to trial by jury on all charges. And you will see by those forms that I have just given you, and you'll have plenty of time while you awaiting for this to come up a week from this Friday, to study those out.

And prior to that I'll tell you that you're entitled to trial by jury on all of these matters. And you do not have to plead guilty to any of these charges.

But, I wanted to give you those so you would have plenty of time to look them over and fill them out. And if you had any questions about them before we start the procedure at any point, you're free to ask me or to ask Mr. Duchardt and we'll be glad to help you with that.

Now, do you have anything that you wish to ask the Court at this time?

DEFENDANT: No, your Honor.

MR. HARMAN: I have one question; you do understand that when the Judge gives these to you in advance with the suggestion that you can fill them if you want to fill those out ahead of time, you don't have to enter a plea of guilty. Do you understand that?

DEFENDANT: Yes, I do.

THE COURT: And nobody is, well, we've covered that before----

MR. HARMAN: I know we have, but just the last comments that you can take those back and fill them out, I just thought let's make it clear that at this point we're not saying that he's made his decision irrevocably or such that it couldn't be changed, your mind can't be changed. It can be changed if you want it to be changed.

THE COURT: It can be changed at any point up until the time the Court accepts your plea of guilty. After that time you will not be permitted to withdraw your plea if you've given one, do you understand that?

DEFENDANT: Yes, sir.

THE COURT: Now, I understand Mr. Duchardt when he was actively representing you in this case advised you that he did not think it would be in your best interest to enter a plea of guilty, is that correct?

DEFENDANT: Yes, your Honor.

THE COURT: All right, and the Court concurs with his decision in that matter. And you understand that as well, I've told you that before, I think.

DEFENDANT: Yes, you have, your Honor.

THE COURT: And I think it's in your best interest that you have the active participation of your attorney in the case rather than just the designation I've given Mr. Duchardt as an advisor upon request. And that would be upon your request, you see.

But, I want you to know that at any time during any of these proceedings you can change your mind and if you want Mr. Duchardt or the public defender office to represent you fully as a lawyer and not, as opposed to your representing yourself as you now are doing, the Court will then appoint that office or Mr. Duchardt to represent you fully in one or all of these cases.

Do you have any questions at all about that?

DEFENDANT: No, your Honor. I thought I made that quite clear.

THE COURT: Well, I just, I thought that we had, but I wanted to cover it sometimes even more fully than we had before to make sure that you did understand that.

And do you have any questions about any of these proceedings now?

DEFENDANT: No, your Honor.

THE COURT: Very well, unless you have something else I believe that will be all. We'll take these matters up again on May 9th.

And, again, after looking over all of those forms, if you have questions or if you don't want to sign them you can advise the Court of that and we'll take it up at that time.

DEFENDANT: Okay, I understand.

THE COURT: That'll be all.

* * * * * * * * * * *

The following proceedings came on before the Honorable Glennon E. McFarland, Judge of Division One of the Seventh Judicial Circuit of Missouri, at Liberty, on Friday, May 9th, 1986.

The defendant was present in person throughout these entire proceedings.

Mr. Fred Duchardt, Clay County Public Defender, was present in person throughout these entire proceedings.

Mr. Larry Harman and Mr. James B. Chancellor were present for the State.

The following proceedings were had:

THE COURT: State of Missouri versus Heath A. Wilkins. There are three cases CR185-490, 491, and 492. We'll take up first CR185-491FX.

MR. DUCHARDT: Judge, before we begin I'd like make a brief record, if I may.

THE COURT: Very well.

MR. DUCHARDT: I believe Mr. Wilkins is desiring to persist with his indications to the Court earlier that he wishes to enter pleas of guilty to the charges before the Court.

I again advise him that it's my belief that he should not persist with this. And I believe he

understands fully my position that I do not intend to assist him with this matter.

Of course, my position, as I understand it from the Court's special appointment, is merely to answer any questions that Mr. Wilkins might have in connection with whatever he wishes to do.

He is now handling his cases pro se.

In that regard the only thing which I have done since the last time that we appeared in court, this morning Mr. Wilkins asked me some technical questions concerning the petitions to enter plea of guilty. Specifically asking me what the ranges of punishment were, the precise ranges of punishment for each of the charges.

He also asked me concerning the answers, what would be an appropriate answer to the question concerning his past mental illness history.

And I advised him that if the information in the mental examination reports was complete and accurate as far he knew, that he should just refer the Court to that information for purposes of the guilty plea petition.

Also Mr. Wilkins informed that, of what he believed to be mistreatment at the Clay County Jail. I advised him to bring that matter to the attention of the Court.

That's all I've talked with him about.

THE COURT: Very well. Mr. Wilkins, are you ready to proceed?

DEFENDANT: Yes, I am.

THE COURT: Is the State ready to proceed?

MR. CHANCELLOR: Yes, your Honor.

THE COURT: Now, we'll proceed first with CR185-491FX.

Mr. Wilkins, I see that you have appeared previously in this Court, the last time being April 23rd, 1986.

And at that time you stated to the Court that you wishes to proceed without a lawyer. And the Court encouraged you to proceed with a lawyer. The Court pointed out many things that would be of benefit to you if you had a lawyer and how you might suffer by not having a lawyer.

And after going through all of that the Court finally granted your request that you be permitted to represent yourself.

And at that time I ordered that Mr. Duchardt remain available for consultation throughout the remainder of the proceedings.

Is that as you remember it?

DEFENDANT: Yes, your Honor.

THE COURT: Now then, I want to again tell you that the Court now still encourages you to seek the assistance of Mr. Duchardt. And I told you previously that at any time throughout the proceedings if you

wanted Mr. Duchardt's position as your advisor or counsellor to change that I would change that and that I would order that he represent you.

Do you understand that?

DEFENDANT: Yes, your Honor.

THE COURT: Now, until you ask that that be done you are representing yourself with whatever aid and assistance you ask him to do for you.

Do you understand that?

DEFENDANT: Yes, your Honor.

THE COURT: Now, I at this time again encourage you to accept the services of the public defender officer, and in particular Mr. Duchardt. I think it would be to your benefit to be assisted by counsel throughout these proceedings for all of the reasons I've previously mentioned. And I can't think of any others that I didn't previously mention, but for all of those reasons. And there may be more that I can think of, but certainly because of your age, your limited education, your limited legal education, which you have none; and even to the extent that he's had more experience in life generally than you have to this point.

And as I explained to you this is a very serious step. If the Court does accept your plea of guilty that you've previously indicated that you wanted to offer to the Court, if the Court accepts that thereafter you will not be permitted to withdraw that plea, you see?

DEFENDANT: I know.

THE COURT: Do you understand all of that?

DEFENDANT: Yes, your Honor.

THE COURT: Now, knowing all of this what is your desire here today?

DEFENDANT: I'd like to proceed with what I've indicated, your Honor.

THE COURT: And what is that?

DEFENDANT: To plead guilty to murder in the first degree, armed criminal action, and unlawful use of a weapon.

THE COURT: Of course, you understand if you are asking to enter a plea of guilty here today that in order to do so you must first waive any right that you have to trial by jury?

DEFENDANT: Yes, your Honor.

THE COURT: And have I given you a form regarding waiver of----

DEFENDANT: Yes, your Honor, you have.

THE COURT: --(indicates) and is this the form that I gave you?

DEFENDANT: Yes, your Honor.

THE COURT: This shows that you're 17 years of age and that you've completed 9 years of schooling.

And in this waiver form it sets forth that the trial of a first degree murder case in this State is a bifurcated or two stage trial.

DEFENDANT: Uh huh.

THE COURT: And it indicates that one of those would be the stage where you would, where a determination of guilt or innocence would be made and the second would be the sentencing stage.

Do you understand that?

DEFENDANT: Yes.

THE COURT: And you do understand that you have a right to have a lawyer at both of these stages. And you also have a right to trial by jury at both of these stages?

DEFENDANT: Yes, your Honor.

THE COURT: And is the first stage that we're talking about now, the guilt or innocence stage, do you understand that?

DEFENDANT: Yes, your Honor.

THE COURT: Is there anything about this form that you did not fully understand?

DEFENDANT: No, your Honor.

THE COURT: Were there any threats, promises, or other inducements made by anyone to get you to sign this form?

DEFENDANT: No, your Honor.

THE COURT: Or to make this decision that you're now making here today to represent yourself, waive your right to trial by jury, and to enter a plea of guilty to this very serious charge?

DEFENDANT: No.

THE COURT: There hasn't been any pressure of any kind exerted on you?

DEFENDANT: Huh uh.

THE COURT: I believe you told me previously, either you did or Mr. Duchardt did and you agreed with it, as I recall, that you started talking to Mr. Duchardt back as far as January of this year and indicated to him that you no longer wanted his representation and that you wanted to waive your trial by jury and enter a plea of guilty as you're doing here today----

DEFENDANT: That is correct.

THE COURT: ----Is that correct?

DEFENDANT: Yes.

THE COURT: And had you given this a lot of thought even before that time and before you told Mr. Duchardt, first told Mr. Duchardt about it?

DEFENDANT: Yes, your Honor.

THE COURT: And have you thought a lot about it since?

DEFENDANT: Yes, your Honor.

THE COURT: And have you had, and I believe Mr. Duchardt has talked to you quite a bit about that between the period of January and April 23rd when we had the last hearing on the matter, is that correct?

DEFENDANT: No, your Honor.

THE COURT: And did he not consistently advise you that he thought it would be in your best interest that he be allowed to continue his representation in the case?

DEFENDANT: He did, your Honor.

THE COURT: Have you had an opportunity to talk to anyone else that you might want to talk to in regard to those questions about representing, representation by your lawyer or waiver of your trial by jury?

DEFENDANT: Plenty of opportunity, your Honor.

THE COURT: Have you talked to anyone else about it?

DEFENDANT: Everybody that needs to, everybody that it needs to be discussed with, yes, your Honor.

THE COURT: And after all of that do you still want to appear here today and waive your trial by jury and enter a plea of guilty to these very serious charges?

DEFENDANT: Yes, your Honor.

THE COURT: And you do understand that one of the charges, murder in the first degree charge, carries the possible death penalty?

DEFENDANT: Yes, your Honor, I'm aware of that.

MR. DUCHARDT: Your Honor, may I just include for the record what Mr. Wilkins told me back in January was not only that he wanted to enter pleas of guilty to the charges, but he wanted to do that specifically so that he might obtain the death penalty.

And that was, it was not strictly that he wished to enter pleas of guilty. And, certainly, the, our difficulties did not arise necessarily because of his desires to enter the pleas of guilty to the charges. Our difficulties arose, and I think Mr. Wilkins would agree, because his desire was to enter pleas of guilty for the expressed purpose of obtaining the death penalty.

Is that a fair statement, Mr. Wilkins?

DEFENDANT: That is correct as it has been stated.

THE COURT: Well, Mr. Wilkins, at one point in the proceeding, if my memory is correct, I told you that, when I was trying to impress you with the seriousness of your decision, I told you that if you persisted with this the Court very probably would enter a death penalty.

DEFENDANT: Yes, your Honor, that's why I do not, did not state what he has just stated.

THE COURT: Well, now I want to tell you something else, that this Court has not made up its mind as to what penalty would be imposed in the event I accept a plea from you here today in any of these cases.

DEFENDANT: I'm well aware of that.

THE COURT: And I might very well go against your recommendation whatever it might be even if you change your mind about it.

DEFENDANT: That's a possibility.

THE COURT: Do you understand that?

DEFENDANT: Yes.

THE COURT: Now, do you understand that any, if you persist here today and if I accept your plea of guilty to any or all of these charges, and I'm talking about, I guess in particular to CR185-491FX, that's the first degree murder charge, if I accept your plea to that then there would be a second stage of that, you see, to assess the punishment.

DEFENDANT: Uh huh, yes.

THE COURT: Now, you would have a right to have a jury make the assessment of your punishment at that time, you see. And you might be able to convince them better than the judge that you, whether you want the death penalty or by that time whether you don't want it, you see? And you can exercise that right to have that trial by jury clear up at any time in the

proceedings until the sentencing is done. Do you understand that fully?

DEFENDANT: Uh huh, yes.

THE COURT: So, I want you to understand that fully if, even though you may want the Court to accept your plea here today, that you can always change your mind about the other later on and have the jury assess your punishment, is that clear?

DEFENDANT: Yes, your Honor.

THE COURT: But, of course right now we're talking about waiver of right to trial by jury to determine your guilt or innocence in this matter.

And I'll ask you one more time, are you sure that you want to waive your constitutional right to have a trial by jury and to enter a plea of guilty to, first of all, the charge of murder in the first degree?

DEFENDANT: Yes, your Honor.

THE COURT: Would you please raise your right hand and receive the oath of the Court. **Heath A. Wilkins**, being first duly sworn by the deputy circuit clerk, was examined as follows:

EXAMINATION BY THE COURT:

Q. Mr. Wilkins, I think before we go any further, I've told you many times in this proceeding that you did have a right to remain silent, you do not have to incriminate yourself, and whatever you say

can and will be used against you throughout the entire proceedings, isn't that right?

A. That's correct.

Q. And I've told you that on many occasions, haven't I?

A. Uh huh.

Q. And the petition to enter plea of guilty that I gave you and asked that you fill out, and which does not carry your signature on the bottom—

A. Not until you looked it over, your Honor.

Q. This also tells you that you have a right to remain silent, does it not?

A. It does.

Q. Now, this petition relates to CR185-491FX. Did you understand everything that you read on each page?

A. Yes, your Honor.

Q. Did you have the opportunity to talk to Mr. Duchardt about anything that you might not've understood?

A. I did.

Q. Is everything true in this petition as far as you know?

A. Yes, your Honor.

Q. And, again, you understand that you don't have to incriminate yourself, you have a right to remain silent. And are you saying that you wish to waive your right to remain silent, are you saying that you wish to waive your right to remain silent and proceed here today?

A. Yes, your Honor.

Q. Now then, this guilty plea petition consists of six pages. One of the things in here, even though you've not signed it, it says, question number 18, "I do not have any complaints against any law enforcement officials concerning my treatment while in jail. I had sufficient food, water, medical care, and bedding and I was not mistreated by any inmate while in jail. There are no exceptions to any of these statements except," and you put yes there.

"I suffered abuse verbally and physically, 10:40. May 9th, 1986, before entering the court."

A. That is correct.

Q. Do you wish to tell the Court more about that?

A. Yes, I do, your Honor. I was proceeding to speak out of the holding cells that they have back here (indicates). And I was told to shut my mouth.

And I made the statement as I have a right to speak. And I was told to shut my mouth. And

then the officer, I'm not absolutely aware of the officer's name but it's the gentleman standing here at the end of the counter (indicates), went back in here to do his business.

Well, he came back some time later and picked me up. And I asked him why he told me to shut my mouth.

I said, "Couldn't you have stated something like be cool or something like that?"

And he told me when he tells me to shut my mouth I shut my mouth. And I made the statement as, "You're in a bad mood today, aren't you?" And then he said with a bad mood," Any mood I'm in is no concern of yours."

And then I told him that he didn't have to come off to me that way. And he pushed me in my face up against the wall and told me that, you know, he can do whatever he wants or something along the lines of you know, there's nothing I can do about it, he can do what he wants.

And when I told him that wasn't so he said, he goes, "You're nothing but a bad assed murderer." And he made a statement, oh, yeah, he said, "What are you going to do about it?"

And he was up in my face when this, you know, he did, he pushed me in my face against the wall and made a statement that I was a bad assed murderer.

And then he asked me what I was going to do about it and I didn't say nothing. I just looked at him. And he was right up in my face. And he said, "I thought so." And then he left and we came in here.

Q. All right. Is that the extent of your complaints against your treatment, or about your treatment?

A. Verbally and physically, yeah.

Q. Do you have any other complaints about your treatment while in jail?

A. No.

Q. All right, now, I'll ask you this, as to this treatment that you've complained about, did that have anything to do with your decision to come in here today and waive your right to trial by jury and tell the Court that you want to plead guilty?

A. No, it did not, your Honor.

Q. It had nothing at all to do with it?

A. Not that I'm aware of.

Q. Okay. Did you want to sign this petition to enter plea of guilty?

A. Yes, your Honor.

(Judge hands petition to enter plea of guilty to defendant who signs it and hands it back to the judge.)

Q. Mr. Wilkins, I see now you've apparently signed the pages of the guilty plea petition, or petition to enter plea of guilty. I want to tell you that you do not have to submit that to the Court, of course.

The rule generally here is that I have the attorneys have their clients fill those things out before they enter a plea because that's part of the proceedings in that.

But, again, you have a right to remain silent and nobody is forcing you to give the Court your petition to enter plea of guilty.

Now, knowing that do you want the Court to take your petition?

A. Yes, your Honor.

Q. Very well, I will do so. Now then, your name now appears on the bottom of each page. Did you sign all of those pages?

A. Yes, your Honor.

Q. And did you read everything above your signature before you signed it?

A. That is correct, your Honor.

Q. And did you understand everything that you read?

A. I did, your Honor.

Q. And you do understand in connection with any plea of guilty that you may give here today that you're entitled to all of the rights set forth in this petition?

A. Yes, your Honor.

Q. Now then, are you, what is it you wish to do with regard to the previous plea that you've made to this Court? Your previous plea was a plea of not guilty and not guilty by reason of mental disease or defect excluding responsibility.

A. Throw it in the trash, your Honor.

Q. Throw it in the trash. Are you saying that you wish to withdraw it?

A. I don't know what you do with it, but get rid of it.

Q. Okay, get rid of it. Are you saying that you want to withdraw your previous plea or not? I'm not trying to put words in your mouth?

A. Yes, your Honor, that is what I'd like to do.

Q. And what plea do you wish to enter at this time?

A. A plea of guilty, your Honor.

Q. And you're talking about to the charge of Class "A" felony of murder in the first degree?

A. That is correct.

Q. Has there been any plea agreement entered into between you and the prosecuting attorney's office in connection with this case?

A. No, your Honor.

THE COURT: Mr. Prosecutor, is that as you understand it, there is no plea agreement at all?

MR. CHANCELLOR: That's correct, there is no plea agreement.

Q. Very well. Mr. Wilkins, are you making this plea voluntarily, and by that I mean is it your own decision?

A. Yes, your Honor.

Q. Have there been any threats or promises or other inducements of any kind to try to get you to enter this plea here today?

A. No, there have not.

Q. I see your petition shows you're 17 years of age. And we talked about that previously. That is correct, is it not?

A. Yes, your Honor.

Q. And you have 9 years of education?

A. Yes, your Honor.

Q. Can you read and write?

A. Yes, your Honor.

Q. Did you have any trouble in reading and understanding your petition to enter plea of guilty?

A. No, your Honor.

Q. And, again, I don't want to repeat but I'll say it one more time, you do understand now the charge to which you are entering a plea of guilty at this time, if you wish to do this, is the charge of murder in the first degree?

A. That is correct, your Honor.

Q. And that the range of punishment for that offense is the death penalty or life imprisonment with no probation, parole, or release except by act of the Governor?

A. That's correct, your Honor.

THE COURT: And that is the correct range of punishment, is it not, Mr. Prosecutor?

MR. CHANCELLOR: Yes, it is, your Honor.

Q. Mr. Wilkins, the charge in this case comes to this Court by way of information from the prosecuting attorney's office. It states that this occurrence is alleged to have occurred on July 27th, 1985.

And I noted in your petition to enter plea of guilty you say, "Murder, first degree." Well, the question was, "I represent to the court I did the

following acts in connection with the charge against me, 'murder, first degree, I stabbed Nancy Allen until death.'"

Would you want to tell me the facts constituting what happened on July 27th, 1985?

A. I took a knife and stabbed her once in the back, no specific area that I'm sure of, and three times in the heart and several times in the neck.

Q. Were there any other facts that led up to that, any other facts that would make the statement more complete?

A. It was premeditated, I did it knowingly.

Q. What do you mean by that?

A. I planned on it.

Q. Who did you plan it with?

A. I planned on killing Nancy Allen myself.

Q. When did you decide to do that?

A. Oh, no particular time really, I mean – no particular time.

Q. When you said it was premeditated what did you mean then?

A. Killing somebody was premeditated. Killing Nancy Allen was not.

Q. Just what did you really intend to do then, I think we need to get into that a little more explicitly, in more detail?

A May I ask why?

Q. Well, the reason is that this Court must determine factually whether or not you are really guilty of murder in the first degree before I can accept your plea.

A. Then would we be able to discuss the facts of what happened and not things that don't pertain to the act?

Q. Well----

A. What I planned on doing and what I did, I mean, those are totally, you know --.

Q. Well, if it pertains to this charge then I would ask you to relate it to the Court.

But, of course, you have a right to remain silent. You don't have to say anything if you don't want to.

A. I'll tell you.

Q. Proceed.

A. Okay. I planned in advance to kill, to kill somebody, so, I robbed the store and I knowingly, before, though, I planned out how to rob it, how to proceed in, how to make sure

nobody else was around, how to go about it, do it fast and without making a mess.

Q. And when did you do all of this, how much prior to the time it happened?

A. Oh –

Q. Generally and everything?

A. That I planned it out and everything?

Q. Yes.

A. I'd say about a week to two.

Q. And why was it that you intended, were you intending to just go there and kill and nothing else? You need to, is there something else that I don't know about?

A. I don't understand your question, your Honor.

Q. Well, did you intend just to go to the store to kill somebody or was it for some other purpose?

A. I, it was ---

Q. Was this a type of liquor store or food store?

A. Yes, it was a liquor store and deli.

Q. And deli, all right. That's where Nancy Allen was, is that correct?

A. Yes.

Q. And you had planned to what at that store?

A. Oh, what we did was we robbed it and we took some merchandise, some money, and a life.

Q And had you planned to do that before you did it?

A. Yes.

Q. And did you have a weapon with you?

A. Yes, your Honor.

Q. What weapon did you have?

A. A knife.

Q. And had you planned taking the knife and using that in connection with the offense?

A. Yes, your Honor.

Q. Well, tell me about that, what was your plan in connection with the use of the knife?

A. To proceed into the store and stab somebody, whoever was behind the counter.

Q. Why did you feel you had to stab someone? Why did you do that?

A. No witnesses.

Q. No witnesses. What do you mean, no witnesses?

A. A dead person can't talk.

Q. That's why you----

A. And identify you.

Q. They can't identify you and that's why you did it?

A. Uh huh.

Q. Let me make sure I'm right, now, this happened on the 27th of July, 1985. These plans or whatever you had, were they formulated prior to July 27th of 1985?

A. Yes, your Honor.

Q. About how much prior?

A. A week to two weeks, your Honor.

Q. And when you were doing the stabbing did you intend to kill her, Nancy Allen, when you stabbed her?

A. Yes, your Honor.

Q. And was that for the purposes of preventing her from later appearing against you as a witness in a proceeding?

A. If I got caught, your Honor.

Q. Okay. And is that the only reason you stabbed her to death at that time?

A. Yes, your Honor.

THE COURT: Mr. Prosecutor, do you have any facts that you think the Court, that should be related to the Court in addition to these? Did this happen in Avondale, Missouri, is that right?

DEFENDANT: Yes, your Honor.

THE COURT: And that's in Clay County, Missouri, is that right?

DEFENDANT: I guess so. I would assume so, I'm here.

MR. CHANCELLOR: Your honor, the address of the liquor store was 2600 North Bell Road in Avondale, Clay County, Missouri.

The only facts that I can add was that this defendant had planned on committing a robbery and killing someone for a couple of weeks.

A plan was developed where he and the three other people involved would go to the North Kansas City Hospital, which is not too far from the liquor store. The defendant and this other person, Patrick Stevens, took a change of clothes with them; walked over the hill to the liquor store, went in at almost closing time.

The plan was for Patrick Stevens to go to the bathroom, or fake going to the bathroom, which he did. And the defendant asked Nancy Allen to make a sandwich for him which had to get her behind the counter in the deli.

As soon as she did, Patrick Stevens came out and grabbed her. And that's when the defendant stabbed her the first time.

Nancy Allen fell to the floor. She'd been stabbed somewhere in the back. I believe it was her kidney or the liver.

The Stevens boy went ahead with taking merchandise. In the meantime I believe Nancy Allen kept talking. And the defendant then proceeded to stab her in the heart and in the throat, mainly in the throat three or four times, to shut her up.

And he knew his actions, what he was doing, at that time he knew that his actions would cause her death.

After the robbery they went back to the hospital. They called two cabs, two separate cabs. The cabs came and took, I believe, the defendant and Stevens to the bus station downtown. And the girl, Margaret Filipiak, and Ray Thompson went in a separate cab.

They went to the bus station in Kansas City where they split the money up. Then they switched partners and Patrick Stevens and Ray Thompson got in one cab and about an hour later the defendant and Margaret Filipiak called another cab.

And then subsequently they met back in the Clay County area around Sherwood Lake.

Then I believe the defendant disposed of the murder weapon, which was known as a butterfly knife.

It was disposed of, from everything we can find out, by throwing it in that lake. And it was never found.

FURTHER EXAMINATION OF THE DEFENDANT BY THE COURT:

Q. Mr. Wilkins, did you hear the statement of fact as related by the assistant prosecuting attorney?

A. He stated it correct, your Honor.

Q. Has he stated, was it entirely correct? Was there anything that he said that was not true?

A. He did not say anything untrue, your Honor.

Q. Does anything need to be added to his statement or taken from it to make it more true and correct or to make ir more understandable to someone?

A. I guess you could state that when we arrived at the park we proceeded to dispose of the evidence.

Q. Anything further?

A. Most of it, anyway.

Q. Anything else?

A. No.

Q. All right. Mr. Wilkins, you do understand that you don't have to plead guilty, and by that I mean you do have a right to trial by jury? We've

covered that many times and you do understand that fully now?

A. Yes, your Honor.

Q. And you understand you have the right to trial by jury at both stages of this proceeding?

A. Yes, your Honor.

Q. And, of course, you do understand that whether you, in the event you had a trial, whether it be trial by jury or any other kind of a trial, for that matter, that you'd be entitled to a lot of rights in connection with that trial.

A. Yes.

Q. Some of those would be those that are contained in your petition to enter plea of guilty, you do understand that?

A. Yes, your Honor.

Q. And among those would be the right to have an attorney with you to aid and assist you throughout the entire proceeding. And you'd be presumed innocent throughout the entire proceeding. And the burden of proving your guilt beyond a reasonable doubt would rest with the State. They would have to prove each and every element of the offense beyond a reasonable doubt or you'd be entitled to go free and the jury would be properly instructed in that regard.

You'd have the right to confront and cross-examine all witnesses that appear against you and to call witnesses in your own behalf by compulsory process.

Now, when I say compulsory process I mean basically by subpoena. You could make people come in and testify for you whether they wanted to or not.

You'd also have the right to remain silent. You wouldn't have to incriminate yourself. We've talked about that previously, but I'll tell you more than that, if you chose to exercise your right of silence no one could even comment about that in the presence of the jury.

And if you were dissatisfied with the results of all of those trial proceedings, you'd always have the right of appeal.

Now, do you fully understand all of those rights?

A. Yes, your Honor.

Q. And do you fully understand that by entering your plea of guilty here today you forever waive any right that you might have to trial by jury or to any other kind of a trial, and you also waive all of those rights that we've just talked about, including all of these set forth in your petition to enter plea of guilty?

A. Yes, your Honor, I understand that.

Q. And you're sure that's what you want to do?

A. Yes, your Honor.

Q. And I don't want to beat a dead horse, but you're sure you don't want a lawyer, you don't Mr. Duchardt to come up here and help you out?

A. I do not want him up here.

Q. As anyone told you, obviously no one has told you that you'd get probation or probation or parole, I take it, or has anybody told you that you'd get any particular punishment or sentence?

A. No, your Honor.

Q. I want you to know that if I accept your plea today that I will order a presentence investigation. That means an investigation would then be conducted by the Missouri Department of Probation and Parole.

As a result of that investigation a written report will come to this Court. And I would review the information in that report in making my decision about the case.

It normally takes around six weeks or longer for the preparation of that report. Do you understand all of that?

A. Yes.

Q. Now, have you had any drugs or alcohol or medicine within the last 48 hours?

A. No, your Honor.

Q. Your head is clear at his time?

A. Yes.

Q. And do you have any history of mental disease or illness of any kind, other than the information that is contained in documents that the court has previously reviewed from, let's see, (examines documents) one of those being the examination by Doctor William S. Logan, M.D. Is that one of the people?

A. Yes, your Honor.

Q. And where did you go to see Doctor Logan? That was March 20th of this year, wasn't it?

A. Just a second and I'll make sure, your Honor. (examines papers.)

Q. All right.

A. Yes your Honor, that was March 20th.

Q. And Doctor Logan is with the Menninger Foundation, is that right?

A. Yes, your honor.

Q. And do you, you also received psychological testing at the Menninger Clinic in Topeka, Kansas, is that correct, or from those people there?

A. Yes, from those people.

Q. From those people. And do you have a copy of what is called the diagnostic interview report?

A. Yes, your Honor.

Q. And also the psychological test report?

A. Yes, your Honor.

Q. The psychological test report is dated 4-8-'86?

A. Yes.

Q. And the diagnostic interview report bears the date, it says, "Date seen, March 20th, 1986" on the front. And it is signed at the end by William S. Logan, M.D. and dated 4-11-'86, is that correct?

A. Yes, your Honor.

Q. And were you also seen by a Doctor Steve Mandracchia with the Western Missouri Mental Health Center?

A. Yes, your Honor, I was.

Q. And did he also render a report in regard to your case?

A. Yes, your Honor, he did.

Q. And all of these, all of the psychological or psychiatric problems that you've had in the past, are they set forth in these reports?

A. Yes, your Honor, they are.

Q. Mr. Duchardt, do you know of any additional information about his mental or emotional condition other than as set forth in those reports?

MR. DUCHARDT: Your Honor, there's a considerable amount of information which is contained in the juvenile files maintained by this Court in the juvenile court facility.

A considerable amount of information from some of the inpatient diagnostic centers, diagnostic and treatment centers where Mr. Wilkins resided during his earlier years.

Most of those, most of the documentation pursuant to those stays were provided to Doctors Mandracchia and Logan. I don't think necessarily all of that information was made available to those men, but those would be the other sources of information concerning Mr. Wilkins that I'd be aware of.

THE COURT: All right. And I previously note from my record that a hearing was held in this Court previously. And, as a matter of fact, it was on April 16th of this year, regarding your competency to proceed.

And the Court heard the testimony of these doctors at that time that I've talked about and at that time found you competent to proceed.

I believe that I asked you at that time if you agreed with the recommendation and with the

opinions of the doctors that you are competent to proceed in this case and you said that you were, is that correct?

A. That is correct.

Q. Do you still feel that way today?

A. Yes, I do.

Q. Very well. Has anyone told you that you should respond to the Court's questions here today with anything other than the truth?

A. No, your Honor.

THE COURT: Mr. Prosecutor, do you know of any witnesses or evidence which would cast a reasonable doubt upon the defendant's guilt or defenses available to the defendant which have not been disclosed to the Court?

MR. CHANCELLOR: No, your Honor.

Q. And you, Mr. Wilkins, do you know of the existence of any witness or of any facts, circumstance, or evidence which has not been presented to the court which would exonerate you of the charge?

A. No.

Q. Exonerate means free you from the charge?

A. No, your Honor.

Q. Have you understood all of the Court's questions?

A. Yes, your Honor.

Q. Have you responded fully and truthfully to all of those questions?

A. Yes, your Honor.

Q. And are you offering your plea of guilty in this case because you are guilty as charged and for no other reason?

A. Yes.

Q. And do you ask the Court to accept your plea?

A. That is correct.

Q. Do you have anything else you wish to say to the Court at this time in connection with this case?

A. No, your Honor.

Q. Is there anything at all about the entire proceeding that you do not fully understand?

A. No, your Honor.

THE COURT: Mr. Prosecutor, do you have anything you wish to ask or anything you wish to say?

MR. CHANCELLOR: Yes, I do, your Honor.

THE COURT: Proceed.

MR. CHANCELLOR: If I may direct my comments to Mr. Wilkins.

EXAMINATION BY MR. CHANCELLOR:

Q. Mr. Wilkins, do you know who I am?

A. Yes.

Q. My name is Jim Chancellor. I'm assistant prosecutor. And you've seen me in court several times, haven't you?

A. Yes, I have.

Q. Okay. Now, being in law enforcement I'm again going to advise you of your right to remain silent. You do not have to incriminate yourself and anything you say can and will be used against you in this court proceedings, do you understand that?

A. Yes.

Q. Okay. And Mr. Duchardt, who has been appointed to assist you in this, is still sitting in the courtroom, is that right?

A. Yeah.

Q. Okay, and have you had any questions of him up until this time?

A. Yes, and they've been dealt with.

Q. Okay, and as I'm walking to you if you have any questions at all about what I'm saying, will you still go to him and ask him his advice?

A. Yes.

Q. And you realize that, okay. Number one, Mr. Wilkins, the State intends to file with the court a motion to take depositions to preserve testimony in this case, in other words we're going to take depositions of essential witnesses so if the case would ever go to trial in the future we could use those depositions in lieu of the witnesses if they are not available.

Do you have any objections to the State doing that?

A. No.

Q. Okay, and the State will also ask that you or, since you are pro se and you are a defendant, that you will be present during those depositions. Would you have any objections to that?

A. No, I would not.

Q. Okay. Also at the sentencing hearing which will be set when the judge sets it sometime down the road, after your presentence investigation is finished the State intends to put on evidence as to basically the facts of the crime and evidence of aggravating circumstances during the crime.

And the State will call basically the witnesses you heard in your preliminary hearing. Do you remember your preliminary hearing?

A. Yes.

Q. Okay. And, of course, the State will introduce any evidence as to aggravating circumstances, such as killing someone to take money, evidence of depravity of mind in that you tortured Nancy Allen, and that you murdered her to keep her from being any sort of witness, do you understand that?

A. Yes.

Q. The State will, if you will go to Mr. Duchardt, put on any evidence at all, at all, that you wish the State to put on. In other words, you have a right to put on mitigating circumstances such as your age, your mental capacity at the time, and the State, I'll tell you right now, intends to call Doctor Logan. Do yo remember Doctor Logan?

A. Yes, I do.

Q. Okay. And the State will do whatever you wish if you tell Mr. Duchardt to put on any mitigation circumstances, to call any witnesses which you want. Do you understand that?

A. Yes.

Q. So, if you want that done you tell Mr. Duchardt, okay?

A. I'm aware of that.

Q. Is there anything about what I've said this morning that you do not understand?

A. No.

Q. And, again, as the Judge said, during the sentencing hearing you'll have a right to a jury, do you understand that?

A. Uh huh.

Q. And if you want a jury you can have a jury?

A. I understand that.

MR. CHANCELLOR: I have nothing further, your Honor.

THE COURT: All right, I'll make the entry and then I'll read it.

Mr. Wilkins, I have written my entry in this case. After I read this entry I will have accepted your plea of guilty to this charge.

I'll ask you one more time, and after that time you'll not be able to withdraw your plea, do you understand that?

DEFENDANT: Yes, your Honor.

THE COURT: And do you now wish to withdraw you plea and not proceed further?

DEFENDANT: No, I do not, your Honor.

THE COURT: And you're asking that I go ahead and accept your plea and read the entry?

DEFENDANT: Yes, your Honor.

THE COURT: I've made this entry; "Comes now State by assistant prosecuting attorney and defendant in person. Fred Duchardt also appears. Defendant waives trial by jury, withdraws plea of not guilty and not guilty by reason of mental disease or defect excluding responsibility and enters plea of guilty to the charge as filed.

The Court finds that defendant's plea of guilty is made voluntarily and intelligently and with full understanding of the charge and consequences of the plea and with understanding of his rights attending a jury trial and the effect of a plea of guilty on those rights.

The Court also finds that there is a factual basis for the plea. The Court, therefore, accepts the plea of guilty to the charge of the class 'A' felony of murder in the first degree.

Presentence investigation ordered and cause continued to June 27th, 1986, at 9:30 a.m."

That will be all insofar as CR185-491FX is concerned.

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